

Indian copyright law from 1952 to 1999: Parliamentary debates, reports & legislation

We began researching and writing for the book – *Create, Copy, Disrupt: India's Intellectual Property Dilemmas* – a few years ago. But along the way, we faced several challenges. Several chapters in the book focus on the historical debates in Indian copyright law. For this, we needed to access primary documents such as versions of Indian copyright law bills as originally tabled, or the Joint Parliamentary Committee Report on the Copyright Bill, 1955. Unfortunately, as we discovered over several months, most of this material is not easily accessible.

In principle, these documents should be widely available because they are published in the Gazette of India and parliamentary reporters, but the digitisation project for these sources is still ongoing, and accessing older versions of the Gazette or parliamentary reporters is difficult. For the book, we sourced these documents from online repositories and select public libraries in Delhi.

Eventually, we managed to procure a wealth of very interesting and relevant material for the history of copyright law. We have compiled this material into an e-book freely accessible to all, as a complementary resource to the analytical conclusions drawn in the book itself. This compilation includes material spanning from 1952 to 1999 and is sourced mainly from the Gazette of India so as to ensure accuracy of the text. Unfortunately, the quality of some of the copies are rather dim. Documents after 1999 have not been included because those are readily available online.

The documents in this compilation are classified into three volumes. The first volume is legislation. This includes Bills as introduced in Parliament, and the final version which were voted upon by both Houses of Parliament. Often, merely comparing the provisions of a Bill as introduced, and as assented to by the President, reveal a story in itself. The second volume includes delegated legislation such as Copyright Rules and International Copyright Orders. There have been various iterations of these over the years. The third and final volume contains Parliamentary debates and reports. These include Parliamentary debates on ratifying international treaties like the Berne Convention and the Universal Copyright Convention (UCC) in the 1950s. This compilation is not arranged thematically but chronologically. Some Lok Sabha debates are missing because they have not been digitised like the Rajya Sabha debates, which we had to source manually.

We hope these documents make it easier for academics and lawyers to understand the history and evolution of Indian copyright law.

We would also like to thank and acknowledge Aparajita Lath for her assistance in procuring some of these documents.

With Best Regards,

Prashant Reddy T. Sumathi Chandrashekaran

Authors of *Create, Copy, Disrupt: India's Intellectual Property Dilemmas* (OUP, 2017)

Vol. 1

SR. NO.	NAME OF DOCUMENT	PAGE NO.
1.	Copyright Bill, 1955 as introduced in Parliament	3
2.	Copyright Act, 1957 as enacted by Parliament	43
3.	Copyright (Amendment) Bill, 1982 as introduced in Parliament	82
4.	Copyright (Amendment) Act, 1983 as enacted by Parliament	98
5.	Copyright (Amendment) Bill, 1984 as introduced in Parliament	110
6.	Copyright (Amendment) Act, 1984 as enacted by Parliament	116
7.	Copyright (Amendment) Ordinance, 1991 promulgated by the President of India on December 28, 1991	120
8.	Copyright (Amendment) Bill, 1992 (Act 35 of 1992) as introduced in Parliament	122
9.	Copyright (Amendment) Act, 1992 as enacted by Parliament	124
10.	Copyright Cess Bill, 1992 (Bill no. 95 of 1992) as introduced in Lok Sabha (but was never enacted)	125
11.	Copyright (Second Amendment) Bill, 1992 as introduced in Parliament	131
12.	Copyright (Amendment) Act, 1994 as enacted by Parliament	161
13.	Copyright (Amendment) Bill, 1999 as introduced in Parliament	177
14.	Copyright (Amendment) Act, 1999 as enacted by Parliament	183



The Gazette of India

EXTRAORDINARY

PART II—Section 2

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RAJYA SABHA

The following Bill was introduced in the Rajya Sabha on the 1st October, 1955:—

Bill No. XV of 1955

A Bill to amend and consolidate the law relating to copyright.

Be it enacted by Parliament in the Sixth Year of the Republic of India as follows:—

CHAPTER I**PRELIMINARY**

1. (1) This Act may be called the Copyright Act, 1955.

Short title,
extent and
commencement.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires,—

Interpreta-
tion.

(a) 'architectural work of art' means any building or structure having an artistic character or design, or any model for such building or structure;

(b) 'artistic work' includes works of painting, drawing, sculpture and artistic craftsmanship, architectural works of art, engravings, photographs, maps, charts and plans;

(c) "author" means,—

(i) in relation to a literary or dramatic work, the author of that work;

- (ii) in relation to a musical work, the composer;
- (iii) in relation to an artistic work other than a photograph, the artist;
- (iv) in relation to a photograph, the owner of the original negative or other device from or by means of which the photograph was directly or indirectly made, at the time when such negative or device was made;
- (v) in relation to a cinematograph film, the owner of the film at the time of its completion; and
- (vi) in relation to a mechanical contrivance, the owner of the original plate from which the contrivance was directly or indirectly derived, at the time when such plate was made;
- (d) 'calendar year' means the year commencing on the 1st day of January;
- (e) "cinematograph film" includes the sound track, if any, and "cinematograph" shall be construed as including any work produced by any process analogous to cinematography;
- (f) 'delivery' in relation to a lecture, includes delivery by means of any mechanical instrument;
- (g) 'dramatic work' includes any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting form of which is fixed in writing or otherwise;
- (h) 'engravings' include etchings, lithographs, wood-cuts, prints and other similar works, not being photographs;
- (i) 'exclusive licence' means a licence which confers on the licensee or on the licensee and persons authorised by him, to the exclusion of all other persons (including the owner of the copyright), any right in respect of the copyright in a work, and 'exclusive licensee' shall be construed accordingly;
- (j) 'Government work' means a work which is made or published by, or under the direction or control of, the Government or any department of the Government;
- (k) 'infringing copy' in relation to a work in which copyright subsists means any copy or colourable imitation of such work made or imported in contravention of the provisions of this Act;

- (l) 'lecture' includes address, speech and sermon;
- (m) 'literary work' includes tables and compilations;
- (n) 'mechanical contrivance' means any record, perforated roll or other contrivance by means of which sound may be reproduced;
- (o) 'musical work' means any combination of melody and harmony or either of them, printed, reduced to writing or otherwise graphically produced or reproduced;
- (p) 'performance' means—
 - (i) in the case of a literary, dramatic, musical or artistic work, any acoustic representation of the work and any visual representation of any dramatic action in the work, including such representation made by means of any mechanical instrument or by radio diffusion;
 - (ii) in the case of a cinematograph film, the exhibition of the film; and
 - (iii) in the case of a mechanical contrivance, the acoustic representation by means of such contrivance of the work reproduced in the contrivance and includes the communication of such work by radio diffusion by means of such contrivance;
- (q) 'performing rights society' means a society, association, or other body, whether incorporated or not, which carries on business in India of issuing or granting licences for the performance in India of any works in which copyright subsists;
- (r) 'photograph' includes photo-lithograph and any work produced by any process analogous to photography;
- (s) 'plate' includes any stereotype or other plate, stone, block, mould, matrix, transfer, negative or other device used or intended to be used for printing or reproducing copies of any work, and any matrix or other appliance by which mechanical contrivances for the acoustic representation of the work are or are intended to be made;
- (t) 'prescribed' means prescribed by rules made under this Act;

- (u) 'pseudonymous work' means a work wherein the name, or in the case of a work of joint ownership, any of the names under which it is published, is not the true name of the author or, as the case may be, of the author in question, or the name by which the author or that author is commonly known;
- (v) 'radio-diffusion' includes communication to the public by any means of wireless diffusion;
- (w) "work" includes a cinematograph film and a mechanical contrivance;
- (x) 'work of joint authorship' means a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors;
- (y) 'work of sculpture' includes casts and models.

Meaning of publication.

3. For the purposes of this Act, 'publication' means—

- (a) in the case of a cinematograph film, the exhibition of the film in public;
- (b) in the case of any other work, the issue of copies of the work to the public;

but does not, except as otherwise expressly provided in this Act, include—

- (i) in the case of a literary, dramatic or musical work, the issue of any mechanical contrivances reproducing such work;
- (ii) in the case of a work of sculpture or an architectural work of art, the issue of photographs and engravings of such work.

When work deemed to be published, performed or delivered in public. 4. Except for the purposes of infringement of copyright, a work shall not be deemed to be published or performed in public, and a lecture shall not be deemed to be delivered in public, if published, performed in public or delivered in public, without the consent or acquiescence of the owner of the copyright.

When work deemed to be first published in India. 5. (1) For the purposes of this Act, a work shall be deemed to be first published in India, notwithstanding that it has been published simultaneously in some other country, unless the publication in India is colourable only and is not intended to satisfy the reasonable requirements of the public; and a work shall be deemed to be published simultaneously in India and in another country if the time between the publication in India and the publication in such other country does not exceed thirty days or such other period as the Central Government may, in any particular case, determine.

(2) If any question arises under this section whether the publication of a work in India is colourable only and is not intended to satisfy the reasonable requirements of the public, it shall be referred to the Copyright Board constituted under section 10 whose decision thereon shall be final.

6. Where, in the case of an unpublished work, the making of the work is extended over a considerable period, the author of the work shall, for the purposes of this Act, be deemed to be a citizen of, or domiciled in, that country of which he was a citizen or wherein he was domiciled during any substantial part of that period.

7. For the purposes of this Act, a body corporate shall be deemed to be domiciled in India if it has an established place of business in India.

CHAPTER II

COPYRIGHT OFFICE AND COPYRIGHT BOARD

8. (1) There shall be established for the purposes of this Act an Office to be called the Copyright Office.

(2) The Copyright Office shall be under the immediate control of the Registrar of Copyrights who shall act under the superintendence and direction of the Central Government.

(3) There shall be a seal for the Copyright Office.

9. (1) The Central Government shall appoint a Registrar of Copyrights, and may appoint one or more Deputy Registrars of Copyrights.

(2) A Deputy Registrar of Copyrights shall discharge under the superintendence and direction of the Registrar of Copyrights such functions of the Registrar under this Act as the Registrar may, from time to time, assign to him; and any reference in this Act to the Registrar of Copyrights shall include a reference to a Deputy Registrar of Copyrights when so discharging any such function.

10. (1) As soon as may be after the commencement of this Act, the Central Government shall constitute a Board to be called the Copyright Board which shall consist of the following members, namely:—

- (a) a Chairman,
- (b) three other members, of whom two shall be persons who have special knowledge of literature or art or who have had experience of the cinematograph industry or any industry manufacturing mechanical contrivances, and
- (c) the Registrar of Copyrights, *ex-officio*.

(2) The Chairman, and the members of the Copyright Board referred to in clause (b) of sub-section (1) shall be appointed by the Central Government and shall hold office for such period and on such terms and conditions as may be prescribed.

(3) The Chairman of the Copyright Board shall be a person who is, or has been, a Judge of a High Court or is qualified for appointment as a Judge of a High Court.

(4) It is hereby declared that the office of the Chairman or other member of the Copyright Board shall not disqualify its holder for being chosen as, or for being, a member of either House of Parliament.

Powers and
procedure of
Copyright
Board.

11. (1) The Copyright Board shall, subject to any rules that may be made under this Act, have power to regulate its own procedure, including the fixing of places and times of its sittings.

(2) If there is a difference of opinion among the members of the Copyright Board in respect of any matter coming before it for decision under this Act, the opinion of the majority shall prevail:

Provided that where there is no such majority, the opinion of the Chairman shall prevail.

(3) The Copyright Board may authorise any of its members to exercise any of the powers conferred on it by clauses (a) to (f) of section 75 and any order made or act done in exercise of those powers by the member so authorised shall be deemed to be the order or act, as the case may be, of the Board.

(4) No act done or proceeding taken by the Copyright Board under this Act shall be questioned on the ground merely of the existence of any vacancy in, or defect in the constitution of, the Board.

(5) The Copyright Board shall be deemed to be a Civil Court for the purposes of sections 480 and 482 of the Code of Criminal Procedure, 1898 and all proceedings before the Board shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code.

XIV
1960

CHAPTER III

COPYRIGHT

Copyright
defined.

12. For the purposes of this Act, 'copyright' in relation to any work means the exclusive right, subject to the provisions of this Act, to produce or reproduce the work or any substantial part thereof in any material form whatsoever, to perform or, in the case of a

lecture, to deliver, the work or any substantial part thereof in public; if the work is unpublished, to publish the work or any substantial part thereof; and shall include the exclusive right—

- (a) in the case of a literary, dramatic or musical work,—
 - (i) to produce, reproduce, perform or publish any translation of the work or any substantial part thereof;
 - (ii) to make any cinematograph film or mechanical contrivance in respect of the work or any substantial part thereof;
 - (iii) to communicate the work or any substantial part thereof by radio diffusion;
- (b) in the case of a dramatic work, to convert it into a novel or other non-dramatic work;
- (c) in the case of a novel or other non-dramatic work, or of an artistic work, to convert it into a dramatic work by way of performance in public or otherwise;
- (d) in the case of a mechanical contrivance, to communicate the work reproduced in such contrivance by means of radio diffusion

and to authorise any such acts as aforesaid.

13. (1) Subject to the provisions of this section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, that is to say,—

Works in
which copy
right sub-
sists.

- (a) original literary, dramatic, musical and artistic works;
- (b) cinematograph films; and
- (c) mechanical contrivances;

(2) Copyright shall not subsist in any work specified in sub-section (1), other than a work to which the provisions of section 42 or section 43 apply, unless,—

- (i) in the case of a published work, the work is first published in India, or where the work is first published outside India, the author is at the date of such publication, or in a case where the author was dead at that date, was at the time of his death, a citizen of India; and
- (ii) in the case of an unpublished work, the author is at the date of the making of the work a citizen of India or domiciled in India.

Explanation.—In the case of a work of joint authorship, the conditions conferring copyright specified in this sub-section shall be satisfied by all the authors of the work.

(3) Copyright shall not subsist in any cinematograph film or mechanical contrivance if in making such film or contrivance the copyright in any other work has been infringed.

(4) The copyright in a cinematograph film or a mechanical contrivance shall not affect the separate copyright in any work in respect of which, or a substantial part of which, the film, or as the case may be, the contrivance is made.

(5) In the case of an architectural work of art, copyright shall subsist only in the artistic character and design and shall not extend to processes or methods of construction.

14. (1) Copyright shall not subsist in any design which is registered under the Indian Patents and Designs Act, 1911.

(2) Copyright in any design, which is capable of being registered under the Indian Patents and Designs Act, 1911, but which has not been so registered, shall cease as soon as any article to which the design has been applied has been reproduced more than fifty times by an industrial process by the owner of the copyright or, with his consent, by any other person.

15. No person shall be entitled to copyright or any similar right in any work, whether published or unpublished, otherwise than under and in accordance with the provisions of this Act or of any other law for the time being in force, but nothing in this section shall be construed as abrogating any right or jurisdiction to restrain a breach of trust or confidence.

CHAPTER IV

OWNERSHIP OF COPYRIGHT AND THE RIGHTS OF THE OWNER

16. Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein:

Provided that—

(a) in the case of a work made for valuable consideration at the instance of any person, such person shall, in the absence of any agreement to the contrary, be the first owner of the copyright;

(b) in the case of a work made in the course of the author's employment, whether under contract of service or otherwise, the employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright;

(c) in the case of an anonymous or pseudonymous work, the publisher of the work shall be the first owner of the copyright until the identity of the author or, in the case of a work of joint authorship, the identity of the authors or any of the authors whose identity is not known, is

Special provision regarding copyright in designs registered under the Indian Patents and Designs Act, 1911.

No copyright except as provided in this Act.

First owner of copyright.

disclosed publicly by both the author or authors and the publisher;

- (d) in the case of a Government work, Government shall, subject to any agreement with the author, be the first owner of the copyright;
- (e) in the case of a work to which the provisions of section 43 apply, the international organisation concerned shall be the first owner of the copyright.

17. (1) The owner of the copyright in any work may assign to any person the right either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof.

(2) Where the assignee of a copyright becomes entitled to any right comprised in the copyright, the assignee as respects the rights so assigned, and the assignor as respects the rights not assigned, shall be treated for the purposes of this Act as the owner of copyright and the provisions of this Act shall have effect accordingly.

18. (1) The author of any literary, dramatic, musical or artistic work who has assigned the copyright therein, shall be entitled to have the copyright reassigned to him by the assignee at any time not earlier than seven years and not later than ten years from the date of the assignment on condition that the author repays to the assignee the whole of the amount which he may have received in respect of the assignment together with interest thereon at such rate as may be prescribed.

(2) The provisions of this section shall not apply to assignments of copyright made before the commencement of this Act.

(3) In this section, the expression 'assignee' includes any subsequent transferee of any rights comprising the copyright and the legal representatives of the assignee or the transferee, as the case may be.

19. No assignment or reassignment of the copyright in any work shall be valid unless it is in writing signed by the assignor or the person making the reassignment, as the case may be, or by his duly authorised agent.

CHAPTER V

TERM OF COPYRIGHT

20. Except as otherwise hereinafter provided, copyright shall subsist in any literary, dramatic, musical or artistic work until twenty-five years from the beginning of the calendar year next following the year in which the author dies.

Explanation.—In this section references to the author shall, in the case of a work of joint authorship, be construed as references to the author who dies first.

Term of
copyright in
anonymous,
pseudony-
mous work

21. In the case of an anonymous or pseudonymous literary, dramatic, musical, or artistic work, copyright shall subsist until twenty-five years from the beginning of the calendar year next following the year in which the work is first published:

Provided that where the identity of the author in question is disclosed publicly by both the author and the publisher or is otherwise established to the satisfaction of the Copyright Board by that author, before the expiry of the said period, the term for which the copyright shall subsist shall be as provided in section 20.

Term of
copyright
in posthu-
mous work

22. (1) In the case of a literary, dramatic or musical work or an engraving, in which copyright subsists at the date of the death of the author or, in the case of any such work of joint authorship, at or immediately before the date of the death of the author who dies first, but which has not been published before that date, copyright shall subsist until twenty-five years from the beginning of the calendar year next following the year in which the work is first published.

(2) For the purposes of this section—

(a) a dramatic or musical work shall be deemed to have been published, if it has been performed in public or if any mechanical contrivances made in respect of the work have been sold to the public or have been offered for sale to the public;

(b) a lecture shall be deemed to have been published, if it has been delivered in public.

Term of
copyright in
photographs

23. In the case of a photograph, copyright shall subsist until twenty-five years from the beginning of the calendar year next following the year in which the original negative or other device from or by means of which the photograph is directly or indirectly derived is made.

Terms of
copyright in
cinemato-
graph films

24. In the case of a cinematograph film, copyright shall subsist until twenty-five years from the beginning of the calendar year next following the year in which a certificate for public exhibition in respect of the film is granted under section 4 of the Cinematograph Act, 1952.

Term of
copyright in
mechanical
contrivances

25. In the case of a mechanical contrivance, copyright shall subsist until twenty-five years from the beginning of the calendar year next following the year in which the original plate from which the contrivance is directly or indirectly derived is made.

26. In the case of a Government work, where Government is the first owner of the copyright therein, copyright shall subsist until twenty-five years from the beginning of the calendar year next following the year in which the work is first published.

27. In the case of a work of an international organisation to which the provisions of section 43 apply, copyright shall subsist until twenty-five years from the beginning of the calendar year next following the year in which the work is first published.

CHAPTER VI

LICENCES

28. The owner of the copyright in any work may grant any interest in the right by licence in writing signed by him or by his duly authorised agent.

29. If at any time during the term of copyright in any work which has been published or performed in public, a complaint is made to the Registrar of Copyrights that the owner of copyright in the work—

(a) has refused to republish or allow the republication of the work or has refused to allow the performance in public of the work, and by reason of such refusal the work is withheld from the public; or

(b) has refused to allow communication to the public by radio-diffusion of such work or in the case of a mechanical contrivance the work reproduced in such contrivance, on terms which the complainant considers reasonable;

it shall be lawful for the Registrar of Copyrights, to grant, after such inquiry as may be prescribed, to the complainant a licence to republish the work, perform the work in public or communicate the work to the public by radio-diffusion, as the case may be, on payment of such fee and subject to such terms and conditions as may be prescribed.

30. (1) Any person may apply to the Registrar of Copyrights for a licence to make for sale in India any mechanical contrivance in respect of any literary, dramatic or musical work in which copyright subsists on the ground that the demand for such contrivances is not being met to an adequate extent or on reasonable terms.

(2) Every such application shall be in such form as may be prescribed and shall be accompanied by a deposit of one thousand rupees which shall,—

(a) if the application is granted, be paid to the owner of the copyright in the literary, dramatic or musical work, as the

case may be, and be set off against the royalties payable to him under sub-section (3), or

(b) if the application is refused, be refunded to the applicant.

(3) Where an application is made to the Registrar of Copyrights under this section, he may, after holding such inquiry as may be prescribed, grant to the applicant a licence, not being an exclusive licence, to make such mechanical contrivances as are referred to in sub-section (1), on condition that the applicant shall pay to the owner of the copyright in the literary, dramatic or musical work, as the case may be, royalties in respect of the contrivances so made which are sold to the public, calculated at such rate as the Copyright Board may determine in the prescribed manner:

Provided that no such licence shall be granted unless such contrivances had previously been made for sale to the public by, or with the consent or acquiescence of, the owner of the copyright in such literary, dramatic or musical work, as the case may be.

(4) A licence under this section shall not be deemed to authorise any alteration in, or omission from, the literary, dramatic or musical work reproduced, unless mechanical contrivances reproducing the work subject to similar alterations and omissions had previously been made by, or with the consent or acquiescence of, the owner of the copyright or unless such alterations or omissions are reasonably necessary for the adaptation of the work to the contrivance in question.

(5) If any such contrivance is made reproducing two or more different works in which copyright subsists and the owners of the copyright therein are different persons, the sums payable as royalties under this section shall be apportioned among the several owners of the copyright in such proportion as, failing agreement, may be determined by the Copyright Board.

Explanation.—Where any such contrivance reproduces some works in which copyright subsists and some others in which no copyright subsists, the full rate of royalties payable in respect of the entire contrivance shall be paid to the owner of the copyright.

Compulsory
licence for
translation.

31. (1) Any person may apply to the Registrar of Copyrights for a licence to produce, perform or publish a translation of a literary, musical or dramatic work in India in any of the languages specified in the Eighth Schedule to the Constitution.

(2) Every such application shall be made in such form, as may be prescribed, and shall state the proposed retail price of a copy of the translation of the work proposed to be made.

(3) Every applicant for a licence under this section shall, along with his application, deposit with the Registrar of Copyrights an amount equal to not less than ten per cent. of the proposed retail selling price of one thousand copies of the translation of the work or one thousand rupees, whichever is greater.

(4) The amount deposited with the Registrar of Copyrights under sub-section (3) shall,—

- (a) if the application is granted, be paid to the owner of the copyright in the work and be set off against the royalties payable to him under sub-section (5), or
- (b) if the application is refused, be refunded to the applicant.

(5) Where an application is made to the Registrar of Copyrights under this section, he may, after holding such inquiry as may be prescribed, grant to the applicant a licence, not being an exclusive licence, to produce, perform or publish a translation of the work in India in any of the languages specified in the Eighth Schedule to the Constitution on condition that the applicant shall pay to the owner of the copyright in the work royalties in respect of such translations of the work sold to the public calculated at such rate as the Copyright Board may, in the circumstances of each case, determine in the prescribed manner:

Provided that no such licence shall be granted unless—

- (a) a translation of the work in such language has not been published by the owner of the copyright in the work or any person authorised by him, within seven years of the first publication of the work, or if a translation has been so published, it has been out of print,
- (b) the applicant has proved to the satisfaction of the Registrar of Copyrights that he had requested and had been denied authorisation by the owner of the copyright to produce, perform or publish such translation or that he was unable to find the owner of the copyright,
- (c) where the applicant was unable to find the owner of the copyright, he had sent a copy of his request for such authorisation to the publisher whose name appears from the work, not less than two months before the application for the licence,
- (d) the Registrar of Copyrights is satisfied that the applicant is competent to produce, perform or publish a correct translation of the work and possesses the means to pay to the owner of the copyright the royalties payable to him under this section, and

(e) the author has not withdrawn circulation of copies of the work.

Where two or more persons apply for a licence of the same kind under the foregoing provisions of this Chapter, the Registrar of Copyrights shall grant the licence to the applicant who, in his opinion, would best serve the interests of the general public.

Licences for public performance. 33. (1) The Registrar of Copyrights may, subject to such terms and conditions as he deems fit, grant a general or special licence for public performance of any literary, dramatic or musical work in which copyright subsists by means of a radio-receiving set or a mechanical contrivance in any specified place or by any specified person.

(2) A general licence granted under sub-section (1) shall be subject to the previous approval of the Copyright Board and shall be published in the Official Gazette.

(3) No licence, whether general or special, shall be granted under this section unless the Registrar of Copyrights is satisfied that, for reasons to be recorded in writing, the grant of such licence is necessary in the interests of the general public.

Licences to public libraries. 34. (1) If it is proved to the satisfaction of the Registrar of Copyrights that any book in which copyright subsists is not available for sale, he may grant a licence to the person in charge of a public library to make or cause to be made one copy of such book or a specified part thereof, for the use of the library.

(2) In this section, the expression 'book' includes pamphlets, sheets of music, maps, charts and plans.

CHAPTER VII

PERFORMING RIGHTS SOCIETIES

Performing rights societies to file certain lists and statements with Registrar. 35. (1) Every performing rights society in India shall, at the prescribed times and in the prescribed manner, file with the Registrar of Copyrights—

(a) lists of all works in respect of which it has authority to issue or grant licences or to collect fees, charges or royalties for or in respect of performance in public of such works in India; and

(b) statements of all fees, charges, or royalties which it proposes to collect for the issue or grant of such licences.

(2) If any such society refuses or neglects to file with the Registrar of Copyrights the lists and statements referred to in sub-section (1) in relation to any work, no action or other proceeding to enforce any remedy, civil or criminal, for infringement of the performing

right in that work shall be commenced except with the consent in writing of the Registrar of Copyrights.

36. (1) As soon as practicable after receipt of the lists and statements referred to in section 35, the Registrar of Copyrights shall publish them in the Official Gazette and shall notify that any person having any objection to the proposals contained in the statements shall lodge particulars in writing of the objections at the Copyright Office on or before a date to be specified, not being earlier than twenty-one days after the date of publication in the Official Gazette of such notice.

(2) As soon as practicable after the date fixed in the said notice as aforesaid, the Registrar of Copyrights shall refer the statements and objections received in response to the notice, to the Copyright Board.

37. (1) The Copyright Board shall consider the statements and objections received by it under section 36 and may, notwithstanding that no objection has been lodged, take notice of any matter which, in its opinion, is one for objection.

(2) The Copyright Board shall, in respect of every objection, give notice thereof to the performing rights society concerned and shall give to such society a reasonable opportunity of being heard.

(3) The Copyright Board shall, after making the prescribed inquiry, make such alterations in the statements as it may think fit, and shall transmit the statements thus altered or unchanged to the Registrar of Copyrights who shall thereupon, as soon as practicable after the receipt of such statements, publish them in the Official Gazette and furnish the performing rights society concerned with a copy thereof.

(4) The statements of fees, charges or royalties as approved by the Copyright Board shall be the fees, charges or royalties which the performing rights society concerned may respectively lawfully sue for or collect in respect of the issue or grant by it of licences for the performance of all or any of its works in India during the prescribed period.

(5) No performing rights society shall have any right of action or any right to enforce any civil or other remedy for infringement of the performing right in any work claimed by such society against any person who has tendered or paid to such society the fees, charges or royalties which have been approved by the Copyright Board as aforesaid.

38. Nothing in this Chapter shall be deemed to affect—

(a) any rights or liabilities in relation to the performing rights in any work accrued or incurred before the commencement of this Act;

Statements
to be pub-
lished.

Copyright
Board to
consider
statements
and objec-
tions.

Existing
rights not
affected.

- (b) any legal proceedings in respect of such rights or liabilities pending at such commencement.

CHAPTER VIII

RIGHTS OF BROADCASTING AUTHORITIES

Broadcast reproduction rights.

39. (1) Where any programme is broadcast by radio diffusion by the Government or any other authority, a special right to be known as "broadcast reproduction right" shall subsist in such programme,

(2) The Government or other authority, as the case may be, shall be the owner of the "broadcast reproduction right" and such right shall subsist until twenty-five years from the beginning of the calendar year next following the year in which the programme was first broadcast.

(3) During the continuance of a "broadcast reproduction right" in relation to any programme, any person other than the owner of the right, who—

- (a) re-broadcasts the programme in question or any substantial part thereof; or
- (b) by utilising the broadcast, or re-broadcast, whether made within India or not, makes any mechanical contrivance reproducing the programme in question or any substantial part thereof;

shall be deemed to infringe that right unless such person is acting under a licence from the owner of the right.

Provisions of this Act to apply to broadcast reproduction rights.

40. Section 17, section 28, section 57, and section 63 (which relate to assignments and licences, civil remedies for infringement and the limitation for suits for infringement) shall, with any necessary adaptations and modifications, apply in relation to a "broadcast reproduction right" in any programme as they apply in relation to the copyright in a work.

Other rights not affected.

41. For the removal of doubts, it is hereby declared that the "broadcast reproduction right" conferred upon a broadcasting authority under this Chapter shall not affect the copyright—

- (a) in any literary, dramatic or musical work which is broadcast by that authority; or
- (b) in any mechanical contrivance reproducing any such work.

CHAPTER IX

INTERNATIONAL COPYRIGHT

42. (1) The Central Government may, by order published in the Official Gazette, direct that all or any provisions of this Act shall apply—

- (a) to works first published in any territory outside India to which the order relates in like manner as if they were first published within India;
- (b) to unpublished works, or any class thereof, the authors whereof were at the time of the making of the work, subjects or citizens of a foreign country to which the order relates, in like manner as if the authors were citizens of India;
- (c) in respect of domicile in any territory outside India to which the order relates in like manner as if such domicile were in India;
- (d) to any work of which the author was at the date of the first publication thereof, or, in a case where the author was dead at that date, was at the time of his death, a subject or citizen of a foreign country to which the order relates in like manner as if the author was a citizen of India at that date or time:

and thereupon, subject to the provisions of this Chapter and of the order, this Act shall apply accordingly:

Provided that—

- (i) before making an order under this section in respect of any foreign country (other than a country with which the Central Government has entered into a treaty or convention relating to copyright), the Central Government shall be satisfied that that foreign country has made, or has undertaken to make, such provisions, if any, as it appears to the Central Government expedient to require for the protection in that country of works entitled to copyright under the provisions of this Act;
- (ii) the order may provide that the term of copyright in India shall not exceed that conferred by the law of the country to which the order relates;
- (iii) the order may provide that the enjoyment of the rights conferred by this Act shall be subject to the accomplishment of such conditions and formalities, if any, as may be prescribed by the order;
- (iv) in applying the provisions of this Act as to ownership of copyright, the order may make such modifications

Power to extend copyright to foreign works.

as appear necessary, having regard to the law of the foreign country;

- (v) the order may provide that this Act or any part thereof shall not apply to works made before the commencement of the order or that this Act or any part thereof shall not apply to works first published before the commencement of the order.

Provisions as
to certain
international
organisations.

43. (1) Where—

- (a) any work is made or first published by or under the direction or control of any organisation to which this section applies, and
- (b) there would, apart from this section, be no copyright in the work in India at the time of the making or, as the case may be, of the first publication thereof, and
- (c) either—
 - (i) the work is published as aforesaid in pursuance of an agreement in that behalf with the author, being an agreement which does not reserve to the author the copyright, if any, in the work, or
 - (ii) under section 16, any copyright in the work would belong to the organisation;

there shall, by virtue of this section, be copyright in the work throughout India.

(2) Any organisation to which this section applies which otherwise had not or at the material time otherwise had not, the legal capacity of a body corporate shall have and be deemed at all material times to have had the legal capacity of a body corporate for the purpose of holding, dealing with, and enforcing copyright and in connection with all legal proceedings relating to copyright.

(3) The organisations to which this section applies are such organisations as the Central Government may, by order published in the Official Gazette, declare to be organisations of which one or more sovereign powers or the Government or Governments thereof are members to which it is expedient that this section shall apply.

Works of
foreign
authors first
published
in India.

44. If it appears to the Central Government that a foreign country does not give or has not undertaken to give, adequate protection to the works of Indian authors, the Central Government may, by order published in the Official Gazette, direct that such of the provisions of this Act as confer copyright on works first published in India shall not apply to works, published after the date specified in the order, the authors whereof are subjects or

citizens of such foreign country, and are not domiciled in India, and thereupon those provisions shall not apply to such works.

45. Every order made by the Central Government under this chapter shall, as soon as may be after it is made, be laid before both Houses of Parliament.

Orders under
this Chapter
to be laid
before
Parliament.

CHAPTER X

REGISTRATION OF COPYRIGHT

46. There shall be kept at the Copyright Office a register in Register of Copyrights in the prescribed form to be called the Register of Copyrights in which may be entered the names or titles of works and the names and addresses of authors, publishers and owners of copyright and such other particulars as may be prescribed.

47. (1) The author or publisher of, or the owner of, or other person interested in, the copyright in any work may make an application in the prescribed form accompanied by the prescribed fee to the Registrar of Copyrights for entering particulars of the work in the Register of Copyrights.

(2) On receipt of an application in respect of any work under sub-section (1), the Registrar of Copyrights may, after holding such inquiry as he may deem fit, enter the particulars of the work in the Register of Copyrights.

48. There shall be also kept at the Copyright Office such indexes Indexes of the Register of Copyrights as may be prescribed.

49. The Register of Copyrights and indexes thereof kept under Form and inspection of register. this Act shall at all reasonable times be open to inspection, and any person shall be entitled to take copies of, or make extracts from, such register, or indexes on payment of such fee and subject to such conditions as may be prescribed.

50. The Register of Copyrights shall be *prima facie* evidence of Register of Copyrights of any entries therein or extracts therefrom certified by the Registrar of Copyrights and sealed with the seal of the Copyright Office particulars contained therein, shall be admissible in evidence in all courts without further proof or production of the original.

51. The Registrar of Copyrights may, in the prescribed cases and subject to the prescribed conditions, amend or alter the Register of the Register of Copyrights by—

Correction of entries in the Register of Copyrights.

- (a) correcting any error in any name, address or particulars; or
- (b) correcting any other error which may have arisen therein by accidental slip or omission.

Rectification
of register
by courts.

52. (1) The High Court, on application of the Registrar of Copyrights or of any person aggrieved, shall order the rectification of the Register of Copyrights by—

- (a) the making of any entry wrongly omitted to be made in the register, or
- (b) the expunging of any entry wrongly made in or remaining on the register, or
- (c) the correction of any error or defect in the register.

(2) In this section 'High Court' means the High Court within whose jurisdiction the Copyright Office is situate or, as the case may be, within whose jurisdiction the person aggrieved actually and voluntarily resides or carries on business or personally works for gain.

CHAPTER XI

INFRINGEMENT OF COPYRIGHT

When copy-
right infrin-
ged.

53. Copyright in a work shall be deemed to be infringed—

(a) when any person, without the consent of the owner of the copyright or without a licence granted by such owner or the Registrar of Copyrights under this Act or without complying with the conditions of the licence so granted—

- (i) does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright; or
- (ii) permits for profit any place to be used for the performance of the work in public, unless he was not aware or had no reasonable ground for believing that such performance would be an infringement of copyright, or

(b) when any person—

- (i) makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or
- (ii) distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, or
- (iii) by way of trade exhibits in public, or
- (iv) imports (except for the personal use of the importer) into India,

any infringing copies of the work with the knowledge that they are infringing copies.

54. The following acts shall not constitute an infringement of copyright, namely:—

- (a) a fair dealing with any work for the purposes of private study, research, criticism, review, news-reel, newspaper or radio summary or any judicial or quasi-judicial proceedings;
- (b) where the author of an artistic work is not the owner of the copyright therein, the use by the author of any mould, cast, sketch, plan, model or study made by him for the purpose of the work, provided that he does not thereby repeat or imitate the main design of that work;
- (c) the making or publishing of paintings, drawings, engravings or photographs of a work of sculpture or artistic craftsmanship, if permanently situate in a public place or building;
- (d) the making or publishing of paintings, drawings, engravings or photographs (which are not in the nature of architectural drawings or plans) of any architectural work of art;
- (e) the publication in a collection, mainly composed of non-copyright matter, *bona fide* intended for the use of educational institutions, and so described in the title and in any advertisement issued by the publisher, of short passages from published literary works, not themselves published for the use of educational institutions in which copyright subsists: provided that not more than two of such passages from works by the same author are published by the same publisher during any period of five years;
- (f) the publication in a newspaper of a report of an address of political nature delivered at a public meeting or of a report of a lecture delivered in public, unless the report of such lecture is prohibited by a conspicuous written or printed notice affixed before and maintained during the lecture at or about the main entrance of the building in which the lecture is given, and, except whilst the building is being used for public worship, in a position near the lecturer;
- (g) the reading or recitation in public of any reasonable extract from any published work:

Provided that the provisions of paragraphs (a), (e), (f) and (g) shall not apply as respects any act unless that act was accompanied by an acknowledgement—

- (i) identifying the work by its title or other description; and

Certain acts
not to be an
infringe-
ment of
copyright.

(ii) unless the work is anonymous or the author of the work has previously agreed or required that no acknowledgement of his name should be made, also identifying the author.

Importation
of infringing
copies.

55. (1) The Registrar of Copyrights, on application by the owner of the copyright in any work or by his authorised agent and on payment of the prescribed fee, may, after making such inquiry as he deems fit, order that copies made out of India of the work which if made in India would infringe copyright shall not be imported.

(2) Subject to any rules made under this Act, the Registrar of Copyrights or any person authorised by him in this behalf may enter any ship, dock or premises where any such copies as are referred to in sub-section (1) may be found and may examine such copies.

(3) All copies to which any order made under sub-section (1) applies shall be deemed to be goods of which the import has been prohibited or restricted under section 19 of the Sea Customs Act, 1878, and all the provisions of that Act shall have effect accordingly.

VIII of
1878.

CHAPTER XII

CIVIL REMEDIES

Definition.

56. For the purposes of this Chapter, unless the context otherwise requires, the expression "owner of copyright" shall include an exclusive licensee.

Civil reme-
dies for
infringe-
ment of
copyright.

57. (1) Where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of injunction, damages, accounts and otherwise as are or may be conferred by law for the infringement of a right:

Provided that the plaintiff shall not be entitled to any remedy other than an injunction in respect of the infringement, if the defendant proves that at the date of the infringement he was not aware and had no reasonable ground for believing that copyright subsisted in the work or that the plaintiff was the owner of the copyright.

(2) The costs of all parties in any proceedings in respect of the infringement of copyright shall be in the discretion of the court.

Protection
of separate
rights.

58. Subject to the provisions of this Act, where the several rights comprising the copyright in any work are owned by different persons, the owner of any such right shall, to the extent of that

right, be entitled to the remedies provided by this Act and may individually enforce such right by means of any suit, action or other proceeding without making the owner of any other right a party to such suit, action or proceeding.

59. (1) Independently of the author's copyright, and even after the assignment either wholly or partially of the said copyright,—
Author's
special
rights.

- (a) the author of a work shall have the right to claim the authorship of the work as well as the right to restrain, or claim damages in respect of, any distortion, mutilation or other modification of the said work which would be prejudicial to his honour or reputation;
- (b) where the work is an article or other contribution to a newspaper, magazine or periodical, the author shall have, in the absence of any agreement to the contrary, the right to restrain, or to claim damages in respect of, the publication of the work, otherwise than as a part of the newspaper, magazine or periodical.

(2) The right conferred upon an author of a work by this section, other than the right to claim authorship of the work, may be exercised by the legal representatives of the author.

60. All infringing copies of any work in which copyright subsists, or of any substantial part thereof, and all plates used or intended to be used for the production of such infringing copies, shall be deemed to be the property of the owner of the copyright, who accordingly may take proceedings for the recovery of possession thereof or in respect of the conversion thereof:
Rights of
owner
against per-
sons posses-
sing or deal-
ing with
infringing
copies.

Provided that the owner of the copyright shall not be entitled to any remedy in respect of the conversion of any infringing copies, if the opponent proves—

- (a) that he was not aware and had no reasonable ground to believe that copyright subsisted in the work of which such copies are alleged to be infringing copies; or
- (b) that he had reasonable grounds for believing that such copies do not involve infringement of the copyright in any work.

61. Notwithstanding anything contained in the Specific Relief Act, 1877, where the construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work has been commenced, the owner of the

copyright shall not be entitled to obtain an injunction to restrain the construction of such building or structure or order its demolition.

(2) Nothing in this section shall apply in respect of the construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work.

Remedy in
the case of
groundless
threat of
legal proce-
dings.

62. Where any person claiming to be the owner of a copyright by circulars, advertisements or otherwise, threatens any other person with any legal proceedings or liability in respect of an alleged infringement of the copyright, any person aggrieved thereby may, notwithstanding anything contained in section 42 of the Specific Relief Act, 1877, institute a declaratory suit that the alleged infringement to which the threats related was not in fact an infringement of any legal rights of the person making such threats and may in any such suit—

- (a) obtain an injunction against the continuance of such threats; and
- (b) recover such damages, if any, as he has sustained by reason of such threats;

Provided that this section shall not apply if the person making such threats, with due diligence, commences and prosecutes an action for infringement of the copyright claimed by him.

Limitation
for suits for
infringe-
ment of
copyright.

63. No suit in respect of the infringement of copyright shall be entertained after the expiry of six years from the date of the infringement.

Owner of
copyright
to be party
to the
proceeding.

64. (1) In every civil suit or other proceeding regarding infringement of copyright instituted by an exclusive licensee, the owner of the copyright shall, unless the court otherwise directs, be made a defendant and where such owner is made a defendant, he shall have the right to dispute the claim of the exclusive licensee.

(2) Where any civil suit or other proceeding regarding infringement of copyright instituted by an exclusive licensee is successful, no fresh suit or other proceeding in respect of the same cause of action shall lie at the instance of the owner of the copyright.

Jurisdiction
of court over
matters

65. (1) Every suit or other civil proceeding arising under this Chapter in respect of the infringement of the copyright in any work arising under or the infringement of any other right conferred by this Act shall be instituted in the district court having jurisdiction.

(2) No such suit or other proceeding regarding infringement of copyright in any work shall, after the commencement of this Act, be entertained unless the copyright is registered with the Registrar of Copyrights under this Act.

CHAPTER XIII

OFFENCES

66. Any person who knowingly infringes or abets the infringement of—

(a) the copyright in a work, or

(b) any other right conferred by this Act,

shall be punishable with imprisonment which may extend to six months, or with fine, or with both.

Explanation.—Construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work shall not be an offence under this section.

67. Any person who knowingly makes, or has in his possession, any plate for the purpose of making infringing copies of any work in which copyright subsists shall be punishable with imprisonment which may extend to six months, or with fine, or with both.

Possession of plates for purpose of making infringing copies,

68. (1) The court trying any offence under this Act may, whether the alleged offender is convicted or not, order that all copies of the work or all plates in the possession of the alleged offender, which appear to it to be infringing copies, or plates for the purpose of making infringing copies, be destroyed or delivered up to the owner of the copyright or otherwise dealt with in such manner as the court may think fit.

Disposal of infringing copies or plates for purpose of making infringing copies.

(2) Any person aggrieved by an order under sub-section (1) may, within thirty days of the date of such order, appeal to the court to which appeals from the court making the order ordinarily lie, and such appellate court may direct that execution of the order be stayed pending disposal of the appeal.

69. Any person who—

- (a) makes or causes to be made a false entry in the Register of Copyrights kept under this Act, or
- (b) makes or causes to be made a writing falsely purporting to be a copy of any entry in such register, or
- (c) produces or tenders or causes to be produced or tendered as evidence any such entry or writing, knowing the same to be false,

Penalty for making false entries in register, etc., for producing or tendering false entries.

shall be punishable with imprisonment which may extend to six months, or with fine, or with both.

Penalty for making false statements for the purpose of deceiving or influencing Registrar or other officer.

70. Any person who—

- (a) with a view to deceiving the Registrar of Copyrights or any other officer in the execution of the provisions of this Act, or
- (b) with a view to procuring or influencing the doing or omission of anything in relation to this Act or any matter thereunder,

makes a false statement or representation knowing the same to be false, shall be punishable with imprisonment which may extend to six months, or with fine, or with both.

Offences by companies.

71. (1) Where any offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for, the conduct of the business of the company, as well as the company, shall be deemed to be guilty of such offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company, and it is proved that the offence was committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded with and punished accordingly.

Explanation.—For the purposes of this section—

- (a) 'company' means anybody corporate and includes a firm or other association of persons; and
- (b) 'director' in relation to a firm means a partner in the firm.

Cognizance of offences.

72. No court inferior to that of a Presidency Magistrate or a Magistrate of the First Class shall try any offence under this Act.

CHAPTER XIV

APPEALS

Appeals.

73. (1) Any person aggrieved by any final decision or order of the Registrar of Copyrights, may, within three months from the date of the order or decision, appeal to the Copyright Board:

Provided that the Registrar of Copyrights shall not sit as a member of the Copyright Board when the Board hears an appeal under this sub-section.

(2) Any person aggrieved by any final decision or order of the Copyright Board, not being a decision or order made in an appeal under sub-section (1), may, within three months from the date of such decision or order, appeal to the High Court within whose jurisdiction the appellant actually and voluntarily resides or carries on business or personally works for gain:

Provided that no such appeal shall lie against the decision of the Copyright Board under sub-section (2) of section 5.

(3) In calculating the period of three months provided for an appeal under this section, the time taken in granting a certified copy of the order or record of the decision appealed against shall be excluded.

74. The High Court may make rules consistent with this Act as to the procedure to be followed in respect of appeals made to it under section 73. Procedure for hearing appeals.

CHAPTER XV

MISCELLANEOUS

75. The Registrar of Copyrights and the Copyright Board shall have the powers of a civil court when trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) requisitioning any public record or copy thereof from any court or office;
- (f) any other matter which may be prescribed.

Explanation.—For the purpose of enforcing the attendance of witnesses, the local limits of the jurisdiction of the Registrar of Copyrights or the Copyright Board, as the case may be, shall be the limits of the territory of India.

Orders for payment of money passed by Registrar of Copyright Board to be executable as a decree.

76. Every order made by the Registrar of Copyrights or the Copyright Board under this Act for the payment of any money or by the High Court in any appeal against any such order of the Copyright Board shall, on a certificate issued by the Registrar of Copyrights, the Copyright Board or the Registrar of the High Court, as the case may be, be deemed to be a decree of a civil court and shall be executable in the same manner as a decree of such court.

Protection of action taken in good faith.

77. No suit or other legal proceeding shall lie against any person in respect of anything which is in good faith done or intended to be done in pursuance of this Act.

Certain persons to be public servants.

78. Every officer appointed under this Act and every member of the Copyright Board shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

XLV
1860

Amendment of Limitation Act.

79. In column 1 of article 40 of the first division in the First Schedule to the Indian Limitation Act, 1908, for the words "copyright or any other exclusive privilege", the words "any exclusive privilege other than copyright" shall be substituted.

IX of 1908

Power to make rules.

80. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, the Central Government may make rules to provide for all or any of the following matters, namely:—

- (a) the term of office and conditions of service of the Chairman and members of the Copyright Board;
- (b) the form of applications to be made, and the licences to be granted, under this Act;
- (c) the procedure to be followed in connection with any proceeding before the Registrar of Copyrights;
- (d) the manner of determining any royalties payable under this Act, and the security to be taken for the payment of such royalties;
- (e) the form of register of copyrights to be kept under this Act and the particulars to be entered therein;
- (f) the matters in respect of which the Registrar of Copyrights and the Copyright Board shall have powers of a civil court;
- (g) the fees which may be payable under this Act;
- (h) the regulation of business of the Copyright Office and of all things by this Act placed under the direction or control of the Registrar of Copyrights.

(3) All rules made under this section shall, as soon as may be, after they are made, be laid before both Houses of Parliament.

81. (1) The maximum period of thirty days specified in sub-section (1) of section 5 or such other period as the Central Government may fix under that sub-section shall apply only to works first published after the commencement of this Act.

(2) The provisions of this Act conferring copyright on cinematograph films shall apply in respect of cinematograph films completed after, or first published after, the commencement of this Act.

(3) The provisions of clause (i) of sub-section (2) of section 13 in so far as they relate to works first published outside India shall have effect only as respects works first published after the commencement of this Act.

(4) The provisions of section 43 shall have effect only as respects works completed after, or first published after, the commencement of this Act.

^{Id 1914} 82. (1) The Indian Copyright Act, 1914 and the Copyright Act ^{Repeals and savings.} of 1911 passed by the Parliament of the United Kingdom as modified in its application to India by the Indian Copyright ^{Id 1914} Act of 1914 are hereby repealed.

(2) Where any person has, before the commencement of this Act, taken any action whereby he has incurred any expenditure or liabilities in connection with the reproduction or performance of any work in a manner which at the time was lawful or for the purpose of or with a view to the reproduction or performance of a work at a time when such reproduction or performance would, but for the passing of this Act, have been lawful, nothing in this section shall diminish or prejudice any rights or interests arising from or in connection with such action which are subsisting and valuable at the said date, unless the person who, by virtue of this Act, becomes entitled to restrain such reproduction or performance agrees to pay such compensation as, failing agreement, may be determined by the Copyright Board.

^{Id 1897} (3) Notwithstanding anything contained in the General Clauses Act, 1897 where any person immediately before the commencement of this Act is entitled to copyright in any work or to any interest in such right, he shall, as from the date of such commencement, be entitled—

(a) in the case of a copyright in a work, to the copyright in such work as defined in this Act; and

Transitional provisions.

(b) in the case of an interest in a copyright, to such interest only and to such extent as the same may be conferred under this Act;

but such copyright shall subsist for the term for which it would have subsisted if this Act had been in force at the date when the work was made, and accordingly, any interest in such right shall subsist as if, at the date when such interest was created, the term of the copyright was limited to the period provided in this Act.

(4) Nothing contained in this Act shall be deemed to render any act done before its commencement an infringement of copyright if that act would not otherwise have constituted such an infringement.

(5) Save as otherwise provided in this section, nothing in this section shall be deemed to affect the application of the General Clauses Act, 1897, with respect to the effect of repeals.

X of 18

STATEMENT OF OBJECTS AND REASONS

The existing law relating to copyright is contained in the Copyright Act, 1911 of the United Kingdom (hereinafter referred to as the U.K. Act) as modified by the Indian Copyright Act, 1914. Apart from the fact that the U.K. Act does not fit in with the changed constitutional status of India, it is necessary to enact an independent self-contained law on the subject of copyright in the light of growing public consciousness of the rights and obligations of authors and in the light of experience gained in the working of the existing law during the last forty years. New and advanced means of communications like broadcasting, lithophotography, etc, also call for certain amendments in the existing law. Adequate provision has also to be made for fulfilment of international obligations in the field of copyright which India might accept. A complete revision of the law of copyright, therefore, seemed inevitable and the Bill attempts such a revision.

2. Though the draft Bill follows generally in a rearranged form the main principles of the existing law, it has introduced several new features which are briefly indicated below:—

(1) A Copyright Office is sought to be established under the immediate control of a Registrar of Copyrights who shall act under the superintendence and direction of the Central Government. The principal function of the Copyright Office will be to maintain a Register of Copyrights in which may be entered, at the option of the authors, the

names or titles of works, the names and addresses of authors and owners of copyright for the time being, and other relevant particulars. Such Register will easily make available useful information to interested members of the public in regard to copyrighted works. In order to encourage registration of copyrights, provision is made that no proceeding regarding infringement of copyright shall be instituted unless the copyright is registered in the Copyright Office. In addition to being in charge of the Copyright Office, the duties of the Registrar of Copyrights will be to entertain and dispose of applications for compulsory licences and to inquire into complaints of importation of infringing copies. An appeal to the Copyright Board is provided for against orders of the Registrar of Copyrights.

- (2) Provision is made for setting up a Copyright Board which will determine the reasonableness of the rates of fees, charges or royalties claimed by performing rights societies, consider applications for general licences for public performances of works and will assess compensation payable under the Bill in certain circumstances. An appeal will lie to the High Court against the decisions of the Copyright Board.
- (3) The definition of "copyright" is enlarged to include the exclusive right to communicate works by radio-diffusion.
- (4) A cinematograph film will have a separate copyright apart from its various components, namely, story, music, etc.
- (5) An author assigning copyright in his work is allowed the option to re-acquire the copyright after seven years but before ten years of the assignment on condition that he returns the amount received by him at the time of the assignment with interest thereon.
- (6) The normal term of copyright is fixed to be the life of the author and a period of 25 years after his death as against the existing term of the life of the author and a period of 50 years after his death. Shorter terms are fixed for anonymous or pseudonymous works, cinematograph films, mechanical contrivances, photographs, etc.
- (7) Under the existing law, the sole right to produce a translation of a work first published in India is extinguished after ten years, unless a translation thereof is produced within that period. The draft Bill makes the right co-extensive with other rights arising out of copyright.

- (8) Provision is made for the issue of a general or special licence for public performances of any work by means of a radio receiving set or a mechanical contrivance.
- (9) A licence may be issued to any library to make or cause to be made one copy of any book in which copyright subsists and which is not available for sale.
- (10) Provision is made for regulating the activities of performing rights societies and also for controlling the fees, charges or royalties to be collected by them.
- (11) Certain rights akin to copyright are conferred on Broadcasting authorities in respect of programmes broadcast by them.
- (12) International copyright relations, which are based on international treaties, will be regulated by specific orders to be made by the Central Government.
- (13) A fair dealing with any work for the purposes of radio summary or judicial proceedings will not hereafter constitute an infringement of copyright.

3. In preparing the Bill, the British Copyright Report, 1952, the suggestions of the various Ministries of the Government of India, the State Governments, the Indian Universities and certain interested industries and associations who were invited to send their comments on the subject have been taken into consideration.

NEW DELHI;

The 19th August, 1955.

ABUL KALAM AZAD

Notes on clauses

Clause 2.—This clause roughly corresponds to section 35 (i) of the U.K. Act. Certain new definitions which have become necessary in view of the changes made in the law, have been added.

Clause 3.—This clause gives the meaning of the expression 'publication' which is freely used in the Bill. Broadly, the expression will have the same meaning as is contained in the corresponding section 1(3) of the U.K. Act.

Clause 4.—This clause explains what is meant by the publication or performance of a work in public and corresponds to section 35(2) of the U.K. Act.

Clause 5.—This clause explains when a work is deemed to be first published in India and when a work is deemed to be published

simultaneously in this country and in some other country. The clause corresponds to section 35(3) of the U.K. Act and the only modification made is that the permissible interval between publication in India and publication in a foreign country has been extended from fourteen days to thirty days in accordance with the provisions of the Universal Copyright Convention, 1952 recently signed at Geneva to which India is a signatory.

Clause 6.—This clause corresponds to section 35(4) of the U.K. Act and provides for the contingency where the making of an unpublished work extends over a considerable period.

Clause 7.—This is a new clause and makes provision regarding the domicile of corporate bodies.

Clauses 8 to 11.—These clauses provide for the establishment of a Copyright Office and a Copyright Board. The Copyright Office shall be under the immediate control of a Registrar of Copyrights who shall act under the superintendence and direction of the Central Government. The Copyright Board shall perform certain statutory functions assigned to it under the Bill.

Clause 12.—This clause contains the definition of the expression 'copyright'. The definition is substantially the same as in the corresponding section 1(2) of the U.K. Act but it has been enlarged to include the exclusive right to communicate works by radio-diffusion.

Clause 13.—This clause roughly corresponds to section 1(1) of the U.K. Act and describes the works in which Copyright shall subsist. It provides that a separate copyright shall subsist in a Cinematograph film as distinct from its various component parts. Sub-clause 2(i) gives effect to the recommendation made in article 2 of the Universal Copyright Convention, 1952 which provides that the works of nationals and residents of a Convention country wherever published should have protection of copyright. Sub-clause (4) makes it clear that the copyright in a cinematograph film shall not affect the separate copyright in each of its various component parts.

Clause 14.—This clause corresponds to section 22 of the U.K. Act. The clause has been modified so as to make the position of designs which are registered or which are capable of being registered under the Indian Patents and Designs Act, 1911 in relation to copyright a little more precise. The modification gives effect to the recommendation made in paragraph 241 of the British Copyright Report, 1952.

Clause 15.—This clause provides that no copyright shall subsist except in accordance with the provisions of the Bill, or any other

law for the time being in force. The clause corresponds to section 31 of the U.K. Act.

Clause 16.—This clause corresponds to section 5 of the U.K. Act and indicates the person who is to be the first owner of copyright in respect of the various kinds of works. Sub-clause (e) contains a new provision in respect of works published by International Organisations.

Clause 17.—This clause provides for assignment of copyright and roughly corresponds to section 5(2) and 5(3) of the U.K. Act.

Clause 18.—This is a new clause which has been introduced to safeguard the rights of authors who on account of poverty or other reasons are forced to part with copyright in their works for a meagre amount and are thus deprived of the fruits of their intellectual labour. The clause enables an author of a work who has assigned the copyright therein, to re-acquire the copyright after seven years but before ten years of the date of the assignment on condition that he returns the amount received by him at the time of the assignment of the copyright together with interest thereon.

Clause 19.—This clause prescribes the mode of assignment and re-assignment of copyright and corresponds to section 5(2) of the U.K. Act.

Clause 20.—This clause prescribes the general term of copyright which is to be the life of the author and a period of 25 years after his death as against the existing term of the life of the author and a period of 50 years after his death.

Clauses 21 to 27.—These clauses prescribe a special term of copyright in respect of certain kinds of works, such as anonymous or pseudonymous works, works of international organisations, Government publications, cinematograph films, mechanical contrivances and photographs.

Clause 28.—This clause confers upon the owner of copyright in any work the right to grant a licence in respect thereof, a right which is recognised in section 5(2) of the U.K. Act.

Clause 29.—This clause provides for the grant in the public interest of compulsory licences in respect of copyright in works both during the life time and after the death of the author. Under the corresponding section 4 of the U.K. Act such a licence could only be granted after the death of the author.

Clause 30.—This clause is based upon section 19 (2) of the U.K. Act with certain modifications specified below:—

- (1) Power to issue licences has been entrusted to the Registrar of Copyrights. Licences will be granted for the making of mechanical contrivances of a work if the demand for such contrivances is not being met by the owner of the copyright to an adequate extent or on reasonable terms. This provision is intended to prevent the owner of copyright in a work from having a monopoly of permitting mechanical contrivances to be made of such work.
- (2) Provision has been made for an initial deposit of Rs. 1,000 to be made by an applicant for a licence so as to discourage frivolous applications and to secure some compensation for the author.
- (3) The power to determine compensation for the grant of a licence has been entrusted to the Registrar of Copyrights. Compensation is to be calculated on the basis of a certain amount of royalty payable in respect of each mechanical contrivance sold by the applicant.

Clause 31.—Under the existing law, namely, section 4 of the Indian Copyright Act, 1914, the sole right to produce a translation of a work first published in India is extinguished after ten years unless a translation thereof is produced within that period. The Bill provides that the right to produce a translation shall enure so long as other rights comprising the copyright subsist. Provision has, however, been made for the issue of a compulsory licence for a translation on payment of compensation if no translation is published by or on behalf of the owner of the work within seven years of the first publication of the work.

Clause 32.—This clause makes provision for a case where more persons than one apply for the same kind of licence.

Clause 33.—This clause provides for the issue of a general or special licence for public performances of a work by means of a radio receiving set or a mechanical contrivance.

Clause 34.—This is a new clause which provides for the issue of a licence to the manager of a library to make or cause to be made one copy of any book in which copyright subsists when it is not available for sale. It is felt that such a provision is necessary for dissemination of useful knowledge.

Clauses 35 to 37.—These clauses regulate the activities of performing rights societies and also provide for the control of the fees, charges or royalties which may be lawfully collected by them.

Clause 38.—This clause provides that any contract entered into by a performing rights society before the commencement of the Act shall not be affected; nor shall any proceeding instituted by such society for enforcing such contract which is pending at such commencement.

Clauses 39 to 41.—These are new provisions which confer upon a broadcasting authority certain rights akin to copyright in respect of any programme broadcast by such authority.

Clause 42.—This clause provides on reciprocal basis for copyright in works published outside India.

Clause 43.—This is a new clause which provides for copyright in works published by certain International Organisations recognised for the purpose by the Central Government.

Clause 44.—The clause empowers the Central Government to withdraw the protection of copyright in respect of works of a foreign author if the country of origin of such author fails to accord corresponding protection to Indian authors.

Clause 45.—This clause provides that all orders made by the Central Government under Chapter IX shall be laid before both Houses of Parliament.

Clauses 46 to 52.—Under the existing law there is no provision for the registration of copyright. A provision has now been made for optional registration of copyright. Such registration will furnish useful information to interested members of the public. In order to encourage voluntary registration of copyright, it has been provided that no proceedings for infringement of copyright shall be entertained unless the copyright is registered.

Clauses 53 and 54.—These clauses roughly correspond to section 2 of the U.K. Act. The clauses describe the acts which shall or shall not constitute an infringement of copyright. It has however, been provided that in every case where an act is not to constitute an infringement of copyright, the source from which the work is copied shall be acknowledged.

Clause 55.—The Registrar of Copyrights has been empowered for the purpose of preventing the importation of infringing copies of a work in which copyright subsists to enter any ship, dock and premises and to inspect such copies.

Clause 56.—This clause provides that for certain purposes the expression 'owner of copyright' shall include an 'exclusive licensee'.

Clause 57.—This clause specifies the remedies for infringement of copyright. It corresponds to section 6 and section 8 of the U.K. Act.

Clause 58.—This clause provides that the author or any other owner of copyright or any person deriving any right, title or interest in the copyright by assignment or otherwise may individually for himself and in his own name bring an action for protecting or enforcing his rights.

Clause 59.—This is a new provision which enables the author of a work to restrain any distortion, mutilation or other modification of his work which may be prejudicial to his honour or reputation.

Clause 60.—This clause describes the rights of the owner of copyright against persons possessing or dealing with infringing copies and corresponds to section 7 of the U.K. Act.

Clause 61.—This clause imposes certain restrictions on the remedies available in the case of infringement of copyright in architectural works. The clause corresponds to section 9(1) of the U.K. Act.

Clause 62.—This is a new clause which is based on section 41-A of the Australian Act. A similar provision is also contained in clause 57 of the Patents Bill which is pending before Parliament.

Clause 63.—The period of limitation for a civil action in respect of infringement of copyright has been extended from three years to six years.

Clause 64.—This clause provides that in any suit or other proceeding regarding infringement of copyright instituted by an exclusive licensee, the owner of the copyright shall be made a party. This provision has been made to enable the owner of the copyright to dispute the claim of the exclusive licensee.

Clause 65.—This clause provides that all suits and proceedings for infringement of copyright shall be instituted in the district court and that no such suit or proceeding shall lie unless the copyright is registered with the Registrar of Copyrights.

Clauses 66 to 70.—These clauses provide a penalty for infringement of certain provisions of the Bill.

Clause 71.—This clause contains a special provision regarding offences by companies. The clause follows the model form in which a similar provision has been inserted in several other Acts.

Clause 72.—This clause provides that no court inferior to that of a Presidency Magistrate or a Magistrate of the First class shall try any offence under the Act.

Clause 73.—This clause provides an appeal to the Copyright Board from a final decision or order of the Registrar of Copyrights and to the High Court from a final decision or order of the Copyright Board.

Clause 74.—This clause enables High Courts to make rules for regulating the procedure to be followed by them in hearing appeals.

Clause 75.—The Registrar of Copyrights and the Copyright Board have been given certain powers of civil court to enable them to effectively discharge their functions under the Bill.

Clause 76.—This clause provides that every order for payment of money made by the Registrar of Copyrights, the Copyright Board or the High Court under this Act shall be executable as a decree of a civil court.

Clauses 77 and 78.—These are certain formal provisions usually inserted in all laws in which they are considered to be necessary.

Clause 79.—A consequential amendment is made in the Indian Limitation Act, 1908, in view of the extension of the period of limitation from three years to six years for filing a suit for infringement of copyright.

Clause 80.—This clause empowers the Central Government to make rules for carrying out the purposes of the Act.

Clause 81.—This clause provides for certain matters during the transitional stage from the old law to the new law.

Clause 82.—This clause repeals the Indian Copyright Act, 1914 and the Copyright Act, 1911 as applicable to India and contains certain saving provisions.

EXPLANATORY MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 80 of the Bill empowers the Central Government to make rules by notification in the Official Gazette to carry out the purposes of the Act. The matters in respect of which such rules may be made are specified therein.

2. Most of the matters specified in clause 80 are of a routine character. They relate to the form of application for a licence, the procedure to be followed by the Registrar of Copyrights in disposing of applications made to him, the form of the Register of Copyrights, the regulation of the business of the Copyright Office, etc.

The only matters which call for some explanation are those specified in items (a), (d), (f) and (g) of sub-clause (2). Item (a) relates to the term of office and conditions of service of the Chairman and members of the Copyright Board. It is not possible to fix such term of office in the Bill itself because that will depend upon several circumstances which cannot be envisaged at this stage, namely, whether the Chairman and the members will be whole-time or part-time officers, whether they will be officials or non-officials, etc. So far as conditions of service are concerned, that is a matter of detail and is usually provided for in rules. Item (d) enables the Central Government to make rules regarding the manner in which royalties payable under the Bill may be determined. Under clause 30(3) royalties are to be calculated with reference to the number of mechanical contrivances sold to the public by the person to whom a licence is granted under that clause. The main principle regulating the payment of royalties is, therefore, set out in the Bill itself; but the exact amount of royalties with reference to such principle will have to be determined after some sort of enquiry and the rules will merely lay down the nature and scope of such enquiry. Item (f) provides for the powers of a civil court which may be conferred upon the Registrar of Copyrights and the Copyright Board. Most of these powers are already enumerated in clause 75 of the Bill and the rule-making power will, therefore, be used for the purpose of conferring certain other minor powers, if any. Item (g) empowers the Central Government to make rules with respect to the fees which may be payable under the Act. These fees will vary in respect of different kinds of applications and proceedings. The fees are not likely to be heavy and there can, therefore, be no objection if they are prescribed by rules.

3. Having regard to the circumstances under which the rule-making power has to be exercised by the Central Government, the powers delegated to it are of normal character. A provision has been made that the rules made under clause 80 should be laid before both Houses of Parliament.

FINANCIAL MEMORANDUM

Clauses 8 and 10 of the Copyright Bill, when they come into operation, envisage the establishment of a Copyright Office under the immediate control of a Registrar of Copyrights, and a Copyright Board. The functions which the Registrar of Copyrights will be required to perform are enumerated in the Act. It is not possible at this stage to give the exact expenditure which will be required for the establishment of the Copyright Office and the Copyright Board. It is,

however, expected that a recurring expenditure of Rs. 4 lakhs annually will be required for the Copyright Office and the Board. Out of this expenditure of Rs. 4 lakhs, at least Rs. 2 lakhs are likely to be collected by way of fees, etc. The difference between income and expenditure, it is hoped, will go on tapering as the work increases and the collections swell.

2. For the year 1955-56 a provision of Rs. 1 lakh has been provided in the budget of the Ministry of Education.

3. Funds to be made available in respect of subsequent years will vary and will be determined from time to time.

S. N. MUKERJEE,
Secretary.

THE COPYRIGHT ACT, 1957

No. 14 OF 1957

BRITISH
EMPIRE
PARLIAMENT



ARRANGEMENT OF SECTIONS

CHAPTER I

PRELIMINARY

SECTIONS

1. Short title, extent and commencement.
2. Interpretation.
3. Meaning of publication.
4. When work not deemed to be published or performed in public.
5. When work deemed to be first published in India.
6. Certain disputes to be decided by Copyright Board.
7. Nationality of author where the making of unpublished work is extended over considerable period.
8. Domicile of corporations.

CHAPTER II

COPYRIGHT OFFICE AND COPYRIGHT BOARD

9. Copyright Office.
10. Registrar and Deputy Registrars of Copyrights.
11. Copyright Board.
12. Powers and procedure of Copyright Board.

CHAPTER III

COPYRIGHT

13. Works in which copyright subsists.
14. Meaning of copyright.
15. Special provision regarding copyright in designs registered or capable of being registered under the Indian Patents and Designs Act, 1911.
16. No copyright except as provided in this Act.

Price 62 np. or 11d.

CHAPTER IV

OWNERSHIP OF COPYRIGHT AND THE RIGHTS OF THE OWNER

SECTIONS

17. First owner of copyright.
18. Assignment of copyright.
19. Mode of assignment.
20. Transmission of copyright in manuscript by testamentary disposition.
21. Right of author to relinquish copyright.

CHAPTER V

TERM OF COPYRIGHT

22. Term of copyright in published literary, dramatic, musical and artistic works.
23. Term of copyright in anonymous and pseudonymous works.
24. Term of copyright in posthumous work.
25. Term of copyright in photographs.
26. Term of copyright in cinematograph films.
27. Term of copyright in records.
28. Term of copyright in Government works.
29. Term of copyright in works of international organisations.

CHAPTER VI

LICENCES

30. Licences by owners of copyright.
31. Compulsory licence in works withheld from public.
32. Licence to produce and publish translations.

CHAPTER VII

PERFORMING RIGHTS SOCIETIES

33. Performing rights society to file statements of fees, charges and royalties.
34. Objections relating to published statements.
35. Determination of objections.
36. Existing rights not affected.

CHAPTER VIII

RIGHTS OF BROADCASTING AUTHORITIES

37. Broadcast reproduction right.
38. Other provisions of this Act to apply to broadcast reproduction rights.
39. Other rights not affected.

INTERNATIONAL COPYRIGHT

SECTIONS

40. Power to extend copyright to foreign works.
41. Provisions as to works of certain international organisations.
42. Power to restrict rights in works of foreign authors first published in India.
43. Orders under this Chapter to be laid before Parliament.

CHAPTER X

REGISTRATION OF COPYRIGHT

44. Register of Copyrights.
45. Entries in Register of Copyrights.
46. Indexes.
47. Form and inspection of register.
48. Register of Copyrights to be *prima facie* evidence of particulars entered therein.
49. Correction of entries in the Register of Copyrights.
50. Rectification of Register by Copyright Board.

CHAPTER XI

INFRINGEMENT OF COPYRIGHT

51. When copyright infringed.
52. Certain acts not to be infringement of copyright.
53. Importation of infringing copies.

CHAPTER XII

CIVIL REMEDIES

54. Definition.
55. Civil remedies for infringement of copyright.
56. Protection of separate rights.
57. Author's special rights.
58. Rights of owner against persons possessing or dealing with infringing copies.
59. Restriction on remedies in the case of works of architecture.
60. Remedy in the case of groundless threat of legal proceedings.
61. Owner of copyright to be party to the proceeding.
62. Jurisdiction of court over matters arising under this Chapter.

CHAPTER XIII

OFFENCES

SECTIONS

63. Offence of infringement of copyright or other rights conferred by this Act.
64. Power of police to seize infringing copies.
65. Possession of plates for purpose of making infringing copies.
66. Disposal of infringing copies or plates for purpose of making infringing copies.
67. Penalty for making false entries in register, etc., for producing or tendering false entries.
68. Penalty for making false statements for the purpose of deceiving or influencing any authority or officer.
69. Offences by companies.
70. Cognizance of offences.

CHAPTER XIV

APPEALS

71. Appeals against certain orders of magistrate.
72. Appeals against orders of Registrar of Copyrights and Copyright Board.
73. Procedure for appeals.

CHAPTER XV

MISCELLANEOUS

74. Registrar of Copyrights and Copyright Board to possess certain powers of civil courts.
75. Orders for payment of money passed by Registrar of Copyrights and Copyright Board to be executable as a decree.
76. Protection of action taken in good faith.
77. Certain persons to be public servants.
78. Power to make rules.
79. Repeals, savings, and transitional provisions.

THE COPYRIGHT ACT, 1957

No. 14 OF 1957

[4th June, 1957]

An Act to amend and consolidate the law relating to copyright.

Be it enacted by Parliament in the Eighth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Copyright Act, 1957.

Short title,
extent and
commencement.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires,—

Interpretation.

(a) "adaptation" means,—

(i) in relation to a dramatic work, the conversion of the work into a non-dramatic work;

(ii) in relation to a literary work or an artistic work, the conversion of the work into a dramatic work by way of performance in public or otherwise;

(iii) in relation to a literary or dramatic work, any abridgement of the work or any version of the work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book or in a newspaper, magazine or similar periodical; and

- 2
- (iv) in relation to a musical work, any arrangement or transcription of the work;
 - (b) "architectural work of art" means any building or structure having an artistic character or design, or any model for such building or structure;
 - (c) "artistic work" means—
 - (i) a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality;
 - (ii) an architectural work of art; and
 - (iii) any other work of artistic craftsmanship;
 - (d) "author" means,—
 - (i) in relation to a literary or dramatic work, the author of the work;
 - (ii) in relation to a musical work, the composer;
 - (iii) in relation to an artistic work other than a photograph, the artist;
 - (iv) in relation to a photograph, the person taking the photograph;
 - (v) in relation to a cinematograph film, the owner of the film at the time of its completion; and
 - (vi) in relation to a record, the owner of the original plate from which the record is made, at the time of the making of the plate;
 - (e) "calendar year" means the year commencing on the 1st day of January;
 - (f) "cinematograph film" includes the sound track, if any, and "cinematograph" shall be construed as including any work produced by any process analogous to cinematography;
 - (g) "delivery", in relation to a lecture, includes delivery by means of any mechanical instrument or by radio-diffusion;
 - (h) "dramatic work" includes any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting form of which is fixed in writing or otherwise but does not include a cinematograph film;
 - (i) "engravings" include etchings, lithographs, wood-cuts, prints and other similar works, not being photographs;
 - (j) "exclusive licence" means a licence which confers on the person holding it an exclusive right to do any act authorised by him to the

exclusion of all other persons (including the owner of the copy-right), any right comprised in the copyright in a work, and "exclusive licensee" shall be construed accordingly;

(k) "Government work" means a work which is made or published by or under the direction or control of—

(i) the Government or any department of the Government;

(ii) any Legislature in India;

(iii) any court, tribunal or other judicial authority in India;

(l) "Indian worn" means a literary, dramatic or musical work, the author of which is a citizen of India;

(m) "infringing copy" means,—

(i) in relation to a literary, dramatic, musical or artistic work, a reproduction thereof otherwise than in the form of a cinematograph film;

(ii) in relation to a cinematograph film, a copy of the film or a record embodying the recording in any part of the sound track associated with the film;

(iii) in relation to a record, any such record embodying the same recording; and

(iv) in relation to a programme in which a broadcast reproduction right subsists under section 37, a record recording the programme,

if such reproduction, copy or record is made or imported in contravention of the provisions of this Act;

(n) "lecture" includes address, speech and sermon;

(o) "literary work" includes tables and compilations;

(p) "musical work" means any combination of melody and harmony or either of them, printed, reduced to writing or otherwise graphically produced or reproduced;

(q) "performance" includes any mode of visual or acoustic presentation, including any such presentation by the exhibition of a cinematograph film, or by means of radio-diffusion, or by the use of a record, or by any other means and, in relation to a lecture, includes the delivery of such lecture;

(r) "performing rights society" means a society, association or other body, whether incorporated or not, which carries on business in India of issuing or granting licences for the performance in India of any works in which copyright subsists;

(s) "photograph" includes photo-lithograph and any work produced by any process analogous to photography but does not include any part of a cinematograph film;

(t) "plate" includes any stereotype or other plate, stone, block, mould, matrix, transfer, negative or other device used or intended to be used for printing or reproducing copies of any work, and any matrix or other appliance by which records for the acoustic presentation of the work are or are intended to be made;

(u) "prescribed" means prescribed by rules made under this Act;

(v) "radio-diffusion" includes communication to the public by any means of wireless diffusion whether in the form of sounds or visual images or both;

(w) "record" means any disc, tape, perforated roll or other device in which sounds are embodied so as to be capable of being reproduced therefrom, other than a sound track associated with a cinematograph film;

(x) "recording" means the aggregate of the sounds embodied in and capable of being reproduced by means of a record;

(y) "work" means any of the following works, namely:—

(i) a literary, dramatic, musical or artistic work;

(ii) a cinematograph film;

(iii) a record;

(z) "work of joint authorship" means a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors;

(za) "work of sculpture" includes casts and models.

Meaning of publication.

3. For the purposes of this Act, "publication" means,—

(a) in the case of a literary, dramatic, musical or artistic work, the issue of copies of the work to the public in sufficient quantities;

(b) in the case of a cinematograph film, the sale or hire or offer for sale or hire of the film or copies thereof to the public;

(c) in the case of a record, the issue of records to the public in sufficient quantities;

but does not, except as otherwise expressly provided in this Act, include,—

(i) in the case of a literary, dramatic or musical work, the issue of any records recording such work;

(ii) in the case of a work of sculpture or an architectural work of art, the issue of photographs and engravings of such work.

4. Except in relation to infringement of copyright, a work shall not be deemed to be published or performed in public, if published, or performed in public, without the licence of the owner of the copyright.

5. For the purposes of this Act, a work published in India shall be deemed to be first published in India, notwithstanding that it has been published simultaneously in some other country, unless such other country provides a shorter term of copyright for such work; and a work shall be deemed to be published simultaneously in India and in another country if the time between the publication in India and the publication in such other country does not exceed thirty days or such other period as the Central Government may, in relation to any specified country, determine.

6. If any question arises,—

(a) whether for the purposes of section 3, copies of any literary, dramatic, musical or artistic work, or records are issued to the public in sufficient quantities; or

(b) whether for the purposes of section 5, the term of copyright for any work is shorter in any other country than that provided in respect of that work under this Act;

it shall be referred to the Copyright Board constituted under section 11 whose decision thereon shall be final.

7. Where, in the case of an unpublished work, the making of the work is extended over a considerable period, the author of the work shall, for the purposes of this Act, be deemed to be a citizen of, or domiciled in, that country of which he was a citizen or wherein he was domiciled during any substantial part of that period.

8. For the purposes of this Act, a body corporate shall be deemed to be domiciled in India if it is incorporated under any law in force in India.

CHAPTER II

COPYRIGHT OFFICE AND COPYRIGHT BOARD

9. (1) There shall be established for the purposes of this Act an Copyright Office. office to be called the Copyright Office.

the Registrar of Copyrights who shall act under the superintendence and direction of the Central Government.

(3) There shall be a seal for the Copyright Office.

Registrar and Deputy Registrars of Copyrights. 10. (1) The Central Government shall appoint a Registrar of Copyrights and may appoint one or more Deputy Registrars of Copyrights.

(2) A Deputy Registrar of Copyrights shall discharge under the superintendence and direction of the Registrar of Copyrights such functions of the Registrar under this Act as the Registrar may, from time to time, assign to him; and any reference in this Act to the Registrar of Copyrights shall include a reference to a Deputy Registrar of Copyrights when so discharging any such functions.

Copyright Board.

11. (1) As soon as may be after the commencement of this Act, the Central Government shall constitute a Board to be called the Copyright Board which shall consist of a Chairman and not less than two nor more than eight other members.

(2) The Chairman and other members of the Copyright Board shall hold office for such period and on such terms and conditions as may be prescribed.

(3) The Chairman of the Copyright Board shall be a person who is, or has been, a Judge of the Supreme Court or a High Court or is qualified for appointment as a Judge of a High Court.

(4) The Registrar of Copyrights shall be the Secretary of the Copyright Board and shall perform such functions as may be prescribed.

Powers and procedure of Copyright Board.

12. (1) The Copyright Board shall, subject to any rules that may be made under this Act, have power to regulate its own procedure, including the fixing of places and times of its sittings:

Provided that the Copyright Board shall ordinarily hear any proceeding instituted before it under this Act within the zone in which, at the time of the institution of the proceeding, the person instituting the proceeding actually and voluntarily resides or carries on business or personally works for gain.

Explanation.—In this sub-section "zone" means a zone specified in section 15 of the States Reorganisation Act, 1956.

(2) The Copyright Board may exercise and discharge its powers and functions through Benches constituted by the Chairman of the Copyright Board from amongst its members, each Bench consisting of not less than three members.

(3) If there is a difference of opinion among the members of the Copyright Board or any Bench thereof in respect of any matter

coming before it for decision under this Act, the opinion of the majority shall prevail:

Provided that where there is no such majority—

(i) if the Chairman was one of the members who heard the matter, the opinion of the Chairman shall prevail;

(ii) if the Chairman was not one of the members who heard the matter, the matter shall be referred to him for his opinion and that opinion shall prevail.

(4) The Copyright Board may authorise any of its members to exercise any of the powers conferred on it by section 74 and any order made or act done in exercise of those powers by the member so authorised shall be deemed to be the order or act, as the case may be, of the Board.

(5) No member of the Copyright Board shall take part in any proceedings before the Board in respect of any matter in which he has a personal interest.

(6) No act done or proceeding taken by the Copyright Board under this Act shall be questioned on the ground merely of the existence of any vacancy in, or defect in the constitution of, the Board.

(7) The Copyright Board shall be deemed to be a civil court for the purposes of sections 480 and 482 of the Code of Criminal Procedure, 1898, and all proceedings before the Board shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code.

CHAPTER III

COPYRIGHT

13. (1) Subject to the provisions of this section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, that is to say,—

- (a) original literary, dramatic, musical and artistic works;
- (b) cinematograph films; and
- (c) records.

(2) Copyright shall not subsist in any work specified in subsection (1), other than a work to which the provisions of section 40 or section 41 apply, unless,—

(i) in the case of a published work, the work is first published in India, or where the work is first published outside India, the author is at the date of such publication, or in a case where the author was dead at that date, was at the time of his death, a citizen of India;

(ii) in the case of an unpublished work other than an architectural work of art, the author is at the date of the making of the work a citizen of India or domiciled in India; and

(iii) in the case of an architectural work of art, the work is located in India.

Explanation.—In the case of a work of joint authorship, the conditions conferring copyright specified in this sub-section shall be satisfied by all the authors of the work.

(3) Copyright shall not subsist—

(a) in any cinematograph film if a substantial part of the film is an infringement of the copyright in any other work;

(b) in any record made in respect of a literary, dramatic or musical work, if in making the record, copyright in such work has been infringed.

(4) The copyright in a cinematograph film or a record shall not affect the separate copyright in any work in respect of which or a substantial part of which, the film, or as the case may be, the record is made.

(5) In the case of an architectural work of art, copyright shall subsist only in the artistic character and design and shall not extend to processes or methods of construction.

**Meaning of
copyright.**

14. (1) For the purposes of this Act, "copyright" means the exclusive right, by virtue of, and subject to the provisions of, this Act,—

(a) in the case of a literary, dramatic or musical work, to do and authorise the doing of any of the following acts, namely:—

(i) to reproduce the work in any material form;

(ii) to publish the work;

(iii) to perform the work in public;

(iv) to produce, reproduce, perform or publish any translation of the work;

(v) to make any cinematograph film or a record in respect of the work;

(vi) to communicate the work by radio-diffusion or to communicate to the public by a loud-speaker or any other similar instrument the radio-diffusion of the work;

(vii) to make any adaptation of the work;

(viii) to do in relation to a translation or an adaptation of the work any of the acts specified in relation to the work in clauses (i) to (vi);

(b) in the case of an artistic work, to do or authorise the doing of any of the following acts, namely:—

- (i) to reproduce the work in any material form;
- (ii) to publish the work;
- (iii) to include the work in any cinematograph film;
- (iv) to make any adaptation of the work;

(v) to do in relation to an adaptation of the work any of the acts specified in relation to the work in clauses (i) to (iii).

(c) in the case of a cinematograph film, to do or authorise the doing of any of the following acts, namely:—

- (i) to make a copy of the film;
- (ii) to cause the film, in so far as it consists of visual images, to be seen in public and, in so far as it consists of sounds, to be heard in public;
- (iii) to make any record embodying the recording in any part of the sound track associated with the film by utilising such sound track;
- (iv) to communicate the film by radio-diffusion;

(d) in the case of a record, to do or authorise the doing of any of the following acts by utilising the record, namely:—

- (i) to make any other record embodying the same recording;
- (ii) to cause the recording embodied in the record to be heard in public;
- (iii) to communicate the recording embodied in the record by radio-diffusion.

(2) Any reference in sub-section (1) to the doing of any act in relation to a work or a translation or an adaptation thereof shall include a reference to the doing of that act in relation to a substantial part thereof.

15. (1) Copyright shall not subsist under this Act in any design which is registered under the Indian Patents and Designs Act, 1911.

Special provision regarding copyright in designs registered

under the Indian Patents and Designs Act, 1911.

(2) Copyright in any design, which is capable of being registered under the Indian Patents and Designs Act, 1911, but which has not been so registered, shall cease as soon as any article to which the design has been applied has been reproduced more than fifty times by an industrial process by the owner of the copyright or, with his licence, by any other person.

or capable of being registered under the Indian Patents and Designs Act, 1911.

1911.

No copyright except as provided in this Act. **16.** No person shall be entitled to copyright or any similar right in any work, whether published or unpublished, otherwise than under and in accordance with the provisions of this Act or of any other law for the time being in force, but nothing in this section shall be construed as abrogating any right or jurisdiction to restrain a breach of trust or confidence.

CHAPTER IV

OWNERSHIP OF COPYRIGHT AND THE RIGHTS OF THE OWNER

First owner of copyright. **17.** Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein:

Provided that—

(a) in the case of a literary, dramatic or artistic work made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall, in the absence of any agreement to the contrary, be the first owner of the copyright in the work in so far as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical, or to the reproduction of the work for the purpose of its being so published, but in all other respects the author shall be the first owner of the copyright in the work;

(b) subject to the provisions of clause (a), in the case of a photograph taken, or a painting or portrait drawn, or an engraving or a cinematograph film made, for valuable consideration at the instance of any person, such person shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

(c) in the case of a work made in the course of the author's employment under a contract of service or apprenticeship, to which clause (a) or clause (b) does not apply, the employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

(d) in the case of a Government work, Government shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

(e) in the case of a work to which the provisions of section 41 apply, the international organisation concerned shall be the first owner of the copyright therein.

18. (1) The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof:

Provided that in the case of the assignment of copyright in any future work, the assignment shall take effect only when the work comes into existence.

(2) Where the assignee of a copyright becomes entitled to any right comprised in the copyright, the assignee as respects the rights so assigned, and the assignor as respects the rights not assigned, shall be treated for the purposes of this Act as the owner of copyright and the provisions of this Act shall have effect accordingly.

(3) In this section, the expression "assignee" as respects the assignment of the copyright in any future work includes the legal representatives of the assignee, if the assignee dies before the work comes into existence.

19. No assignment of the copyright in any work shall be valid unless it is in writing signed by the assignor or by his duly authorised agent.

20. Where under a bequest a person is entitled to the manuscript of a literary, dramatic or musical work, or to an artistic work, and the work was not published before the death of the testator, the bequest shall, unless the contrary intention is indicated in the testator's will or any codicil thereto, be construed as including the copyright in the work in so far as the testator was the owner of the copyright immediately before his death.

Explanation.—In this section, the expression "manuscript" means the original document embodying the work, whether written by hand or not.

21. (1) The author of a work may relinquish all or any of the rights comprised in the copyright in the work by giving notice in the prescribed form to the Registrar of Copyrights and thereupon such rights shall, subject to the provisions of sub-section (3), cease to exist from the date of the notice.

(2) On receipt of a notice under sub-section (1), the Registrar of Copyrights shall cause it to be published in the Official Gazette and in such other manner as he may deem fit.

(3) The relinquishment of all or any of the rights comprised in the copyright in a work shall not affect any rights subsisting in favour of any person on the date of the notice referred to in sub-section (1).

CHAPTER V

TERM OF COPYRIGHT

Term of
copyright in
published
literary, dra-
mastic, musi-
cal and artis-
tic works.

22. Except as otherwise hereinafter provided, copyright shall subsist in any literary, dramatic, musical or artistic work (other than a photograph) published within the lifetime of the author until fifty years from the beginning of the calendar year next following the year in which the author dies.

Explanation.—In this section the reference to the author shall, in the case of a work of joint authorship, be construed as a reference to the author who dies last.

Term of
copyright in
anonymous
and pseu-
donymously
works.

23. (1) In the case of a literary, dramatic, musical or artistic work (other than a photograph), which is published anonymously or pseudonymously, copyright shall subsist until fifty years from the beginning of the calendar year next following the year in which the work is first published:

Provided that where the identity of the author is disclosed before the expiry of the said period, copyright shall subsist until fifty years from the beginning of the calendar year next following the year in which the author dies.

(2) In sub-section (1), references to the author shall, in the case of an anonymous work of joint authorship, be construed,—

(a) where the identity of one of the authors is disclosed, as references to that author;

(b) where the identity of more authors than one is disclosed, as references to the author who dies last from amongst such authors.

(3) In sub-section (1), references to the author shall, in the case of a pseudonymous work of joint authorship, be construed,—

(a) where the names of one or more (but not all) of the authors are pseudonyms and his or their identity is not disclosed, as references to the author whose name is not a pseudonym, or, if the names of two or more of the authors are not pseudonyms, as references to such of those authors who dies last;

(b) where the names of one or more (but not all) of the authors are pseudonyms and the identity of one or more of them is disclosed, as references to the author who dies last from amongst the authors whose names are not pseudonyms and the authors whose names are pseudonyms and are disclosed; and

(c) where the names of all the authors are pseudonyms and the identity of one of them is disclosed, as references to the

author whose identity is disclosed or if the identity of two or more of such authors is disclosed, as references to such of those authors who dies last.

Explanation.—For the purposes of this section, the identity of an author shall be deemed to have been disclosed, if either the identity of the author is disclosed publicly by both the author and the publisher or is otherwise established to the satisfaction of the Copyright Board by that author.

24. (1) In the case of a literary, dramatic or musical work or an engraving, in which copyright subsists at the date of the death of the author or, in the case of any such work of joint authorship, at or immediately before the date of the death of the author who dies last, but which, or any adaptation of which, has not been published before that date, copyright shall subsist until fifty years from the beginning of the calendar year next following the year in which the work is first published or, where an adaptation of the work is published in any earlier year, from the beginning of the calendar year next following that year.

(2) For the purposes of this section a literary, dramatic or musical work or an adaptation of any such work shall be deemed to have been published, if it has been performed in public or if any records made in respect of the work have been sold to the public or have been offered for sale to the public.

25. In the case of a photograph, copyright shall subsist until fifty years from the beginning of the calendar year next following the year in which the photograph is published.

26. In the case of a cinematograph film, copyright shall subsist until fifty years from the beginning of the calendar year next following the year in which the film is published.

27. In the case of a record, copyright shall subsist until fifty years from the beginning of the calendar year next following the year in which the record is published.

28. In the case of a Government work, where Government is the first owner of the copyright therein, copyright shall subsist until fifty years from the beginning of the calendar year next following the year in which the work is first published.

29. In the case of a work of an international organisation to which the provisions of section 41 apply, copyright shall subsist until fifty years from the beginning of the calendar year next following the year in which the work is first published.

CHAPTER VI

LICENCES

Licences by owners of copyright. 30. The owner of the copyright in any existing work or the prospective owner of the copyright in any future work may grant any interest in the right by licence in writing signed by him or by his duly authorised agent:

Provided that in the case of a licence relating to copyright in any future work, the licence shall take effect only when the work comes into existence.

Explanation.—Where a person to whom a licence relating to copyright in any future work is granted under this section dies before the work comes into existence, his legal representatives shall, in the absence of any provision to the contrary in the licence, be entitled to the benefit of the licence.

Compulsory licence in works withheld from public. 31. (1) If at any time during the term of copyright in any Indian work which has been published or performed in public, a complaint is made to the Copyright Board that the owner of copyright in the work—

(a) has refused to republish or allow the republication of the work or has refused to allow the performance in public of the work, and by reason of such refusal the work is withheld from the public; or

(b) has refused to allow communication to the public by radio-diffusion of such work or in the case of a record the work recorded in such record, on terms which the complainant considers reasonable;

the Copyright Board, after giving to the owner of the copyright in the work a reasonable opportunity of being heard and after holding such inquiry as it may deem necessary, may, if it is satisfied that the grounds for such refusal are not reasonable, direct the Registrar of Copyrights to grant to the complainant a licence to republish the work, perform the work in public or communicate the work to the public by radio-diffusion, as the case may be, subject to payment to the owner of the copyright of such compensation and subject to such other terms and conditions as the Copyright Board may determine; and thereupon the Registrar of Copyrights shall grant the licence to the complainant in accordance with the directions of the Copyright Board, on payment of such fee as may be prescribed.

Explanation.—In this sub-section, the expression "Indian work" includes—

(i) an artistic work, the author of which is a citizen of India; and

(ii) a cinematograph film or a record made or manufactured in India.

(2) Where two or more persons have made a complaint under sub-section (1), the licence shall be granted to the complainant who in the opinion of the Copyright Board would best serve the interests of the general public.

32. (1) Any person may apply to the Copyright Board for a Licence to produce and publish a translation of a literary or dramatic work in any language.

(2) Every such application shall be made in such form as may be prescribed and shall state the proposed retail price of a copy of the translation of the work.

(3) Every applicant for a licence under this section shall, along with his application, deposit with the Registrar of Copyrights such fee as may be prescribed.

(4) Where an application is made to the Copyright Board under this section, it may, after holding such inquiry as may be prescribed, grant to the applicant a licence, not being an exclusive licence, to produce and publish a translation of the work in the language mentioned in the application, on condition that the applicant shall pay to the owner of the copyright in the work royalties in respect of copies of the translation of the work sold to the public, calculated at such rate as the Copyright Board may, in the circumstances of each case, determine in the prescribed manner:

Provided that no such licence shall be granted, unless—

(a) a translation of the work in the language mentioned in the application has not been published by the owner of the copyright in the work or any person authorised by him, within seven years of the first publication of the work, or if a translation has been so published, it has been out of print;

(b) the applicant has proved to the satisfaction of the Copyright Board that he had requested and had been denied authorisation by the owner of the copyright to produce and publish such translation, or that he was unable to find the owner of the copyright;

(c) where the applicant was unable to find the owner of the copyright, he had sent a copy of his request for such authorisation to the publisher whose name appears from the work, not less than two months before the application for the licence;

(d) the Copyright Board is satisfied that the applicant is competent to produce and publish a correct translation of the work and possesses the means to pay to the owner of the copyright the royalties payable to him under this section;

(e) the author has not withdrawn from circulation copies of the work; and

(f) an opportunity of being heard is given, wherever practicable, to the owner of the copyright in the work.

CHAPTER VII

PERFORMING RIGHTS SOCIETIES

Performing rights society to file statements of fees, charges and royalties.

33. (1) Every performing rights society shall, within the prescribed time and in the prescribed manner, prepare, publish and file with the Registrar of Copyrights, statements of all fees, charges or royalties which it proposes to collect for the grant of licences for performance in public of works in respect of which it has authority to grant such licences.

(2) If any such society fails to prepare, publish or file with the Registrar of Copyrights the statements referred to in sub-section (1) in relation to any work in accordance with the provisions of that sub-section, no action or other proceeding to enforce any remedy, civil or criminal, for infringement of the performing rights in that work shall be commenced except with the consent of the Registrar of Copyrights.

Objections relating to published statements.

34. Any person having any objections to any fees, charges or royalties or other particulars included in any statement referred to in section 33 may at any time lodge such objections in writing at the Copyright Office.

Determination of objections.

35. (1) Every objection lodged at the Copyright Office under section 34 shall, as soon as may be, be referred to the Copyright Board and the Copyright Board shall decide such objection in the manner hereinafter provided.

(2) The Copyright Board shall, in respect of every such objection, give notice thereof to the performing rights society concerned.

(3) The Copyright Board shall, after giving such society and the person who lodged the objection a reasonable opportunity of being heard and after making such further inquiry as may be prescribed, make such alterations in the statements as it may think fit, and shall transmit the alterations made by it to the Registrar of Copyrights, who shall thereupon, as soon as practicable after the receipt of such alterations, publish them in the Official Gazette and furnish the performing rights society concerned and the person who lodged the objection with a copy thereof.

(4) The fees, charges or royalties as altered by the Copyright Board shall be the fees, charges or royalties which the performing

rights society concerned may respectively lawfully sue for or collect in respect of the grant by it of licences for the performance in public of works to which such fees, charges or royalties relate.

(5) No performing rights society shall have any right of action or any right to enforce any civil or other remedy for infringement of the performing rights in any work against any person who has tendered or paid to such society the fees, charges or royalties specified in respect of that work in a statement published by that society under sub-section (1) of section 33 or where such statement has been altered by the Copyright Board under this section in the statement so altered.

(6) Where any person has lodged an objection at the Copyright Office regarding the fees, charges or royalties in respect of any work included in a statement published under section 33, that person or any other person, on depositing such fees, charges or royalties at the Copyright Office, may, pending the final decision of such objection by the Copyright Board or the High Court, as the case may be, perform that work without infringing the copyright therein.

(7) The fees, charges or royalties deposited at the Copyright Office under sub-section (6) shall be paid to the performing rights society concerned or to the person who made the deposit, or partly to such society and partly to such person, in accordance with the final decision on the objection as aforesaid.

36. Nothing in this Chapter shall be deemed to affect—

- (a) any rights or liabilities in relation to the performing rights in any work accrued or incurred before the commencement of this Act; Existing rights not affected.
- (b) any legal proceedings in respect of such rights or liabilities pending at such commencement.

CHAPTER VIII

RIGHTS OF BROADCASTING AUTHORITIES

37. (1) Where any programme is broadcast by radio-diffusion by the Government or any other broadcasting authority, a special right to be known as "broadcast reproduction right" shall subsist in such programme. Broadcast reproduction right.

(2) The Government or other broadcasting authority, as the case may be, shall be the owner of the broadcast reproduction right and such right shall subsist until twenty-five years from the beginning of the calendar year next following the year in which the programme is first broadcast.

(3) During the continuance of a broadcast reproduction right in relation to any programme, any person who,—

- (a) without the licence of the owner of the right—
 - (i) rebroadcasts the programme in question or any substantial part thereof; or
 - (ii) causes the programme in question or any substantial part thereof to be heard in public; or
- (b) without the licence of the owner of the right to utilise the broadcast for the purpose of making a record recording the programme in question or any substantial part thereof, makes any such record,

shall be deemed to infringe that broadcast reproduction right.

Other provisions of this Act to apply to broadcast reproduction rights.

38. Sections 18, 19, 30, 53, 55, 58, 64, 65 and 66 shall, with any necessary adaptations and modifications, apply in relation to the broadcast reproduction right in any programme as they apply in relation to the copyright in a work:

Provided that a licence to utilise a broadcast for the purpose of making a record recording a programme in which broadcast reproduction right subsists or any substantial part of such programme, shall not take effect unless the person to whom such licence is granted has also obtained a licence to make records recording the work embodied in such programme from the owner of the copyright in such work.

Other rights not affected.

39. For the removal of doubts, it is hereby declared that the broadcast reproduction right conferred upon a broadcasting authority under this Chapter shall not affect the copyright—

- (a) in any literary, dramatic or musical work which is broadcast by that authority; or
- (b) in any record recording any such work.

CHAPTER IX

INTERNATIONAL COPYRIGHT

Power to extend copyright to foreign works.

40. The Central Government may, by order published in the Official Gazette, direct that all or any provisions of this Act shall apply—

- (a) to works first published in any territory outside India to which the order relates in like manner as if they were first published within India;
- (b) to unpublished works, or any class thereof, the authors whereof were at the time of the making of the work, subjects or citizens of a foreign country to which the order relates, in like manner as if the authors were citizens of India;

(c) in respect of domicile in any territory outside India to which the order relates in like manner as if such domicile were in India;

(d) to any work of which the author was at the date of the first publication thereof, or, in a case where the author was dead at that date, was at the time of his death, a subject or citizen of a foreign country to which the order relates in like manner as if the author was a citizen of India at that date or time;

and thereupon, subject to the provisions of this Chapter and of the order, this Act shall apply accordingly:

Provided that—

(i) before making an order under this section in respect of any foreign country (other than a country with which India has entered into a treaty or which is a party to a convention relating to copyright to which India is also a party), the Central Government shall be satisfied that that foreign country has made, or has undertaken to make, such provisions, if any, as it appears to the Central Government expedient to require for the protection in that country of works entitled to copyright under the provisions of this Act;

(ii) the order may provide that the provisions of this Act shall apply either generally or in relation to such classes of works or such classes of cases as may be specified in the order;

(iii) the order may provide that the term of copyright in India shall not exceed that conferred by the law of the country to which the order relates;

(iv) the order may provide that the enjoyment of the rights conferred by this Act shall be subject to the accomplishment of such conditions and formalities, if any, as may be prescribed by the order;

(v) in applying the provisions of this Act as to ownership of copyright, the order may make such exceptions and modifications as appear necessary, having regard to the law of the foreign country;

(vi) the order may provide that this Act or any part thereof shall not apply to works made before the commencement of the order or that this Act or any part thereof shall not apply to works first published before the commencement of the order.

41. (1) Where—

(a) any work is made or first published by or under the direction or control of any organisation to which this section applies, and

Provisions as
to works of
certain
international
organisa-
tions.

(b) there would, apart from this section, be no copyright in the work in India at the time of the making or, as the case may be, of the first publication thereof, and

(c) either—

(i) the work is published as aforesaid in pursuance of an agreement in that behalf with the author, being an agreement which does not reserve to the author the copyright, if any, in the work, or

(ii) under section 17 any copyright in the work would belong to the organisation;

there shall, by virtue of this section, be copyright in the work throughout India.

(2) Any organisation to which this section applies which at the material time had not the legal capacity of a body corporate shall have and be deemed at all material times to have had the legal capacity of a body corporate for the purpose of holding, dealing with, and enforcing copyright and in connection with all legal proceedings relating to copyright.

(3) The organisations to which this section applies are such organisations as the Central Government may, by order published in the Official Gazette, declare to be organisations of which one or more sovereign powers or the Government or Governments thereof are members to which it is expedient that this section shall apply.

Power to restrict rights in works of foreign authors first published in India.

42. If it appears to the Central Government that a foreign country does not give or has not undertaken to give adequate protection to the works of Indian authors, the Central Government may, by order published in the Official Gazette, direct that such of the provisions of this Act as confer copyright on works first published in India shall not apply to works, published after the date specified in the order, the authors whereof are subjects or citizens of such foreign country and are not domiciled in India, and thereupon those provisions shall not apply to such works.

Orders under this Chapter to be laid before Parliament.

43. Every order made by the Central Government under this Chapter shall, as soon as may be after it is made, be laid before both Houses of Parliament and shall be subject to such modifications as Parliament may make during the session in which it is so laid or the session immediately following.

CHAPTER X

REGISTRATION OF COPYRIGHT

Register of Copyrights.

44. There shall be kept at the Copyright Office a register in the prescribed form to be called the Register of Copyright in

which may be entered the names or titles of works and the names and addresses of authors, publishers and owners of copyright and such other particulars as may be prescribed.

45. (1) The author or publisher of, or the owner of or other person interested in the copyright in, any work may make an application in the prescribed form accompanied by the prescribed fee to the Registrar of Copyrights for entering particulars of the work in the Register of Copyrights.

(2) On receipt of an application in respect of any work under sub-section (1), the Registrar of Copyrights may, after holding such inquiry as he may deem fit, enter the particulars of the work in the Register of Copyrights.

46. There shall be also kept at the Copyright Office such indexes of the Register of Copyrights as may be prescribed.

47. The Register of Copyrights and indexes thereof kept under this Act shall at all reasonable times be open to inspection, and any person shall be entitled to take copies of, or make extracts from, such register or indexes on payment of such fee and subject to such conditions as may be prescribed.

48. The Register of Copyrights shall be *prima facie* evidence of the particulars entered therein and documents purporting to be copies of any entries therein, or extracts therefrom certified by the Registrar of Copyrights and sealed with the seal of the Copyright Office shall be admissible in evidence in all courts without further proof or production of the original.

49. The Registrar of Copyrights may, in the prescribed cases and subject to the prescribed conditions, amend or alter the Register of Copyrights by—

(a) correcting any error in any name, address or particulars; or

(b) correcting any other error which may have arisen therein by accidental slip or omission.

50. The Copyright Board, on application of the Registrar of Copyrights or of any person aggrieved, shall order the rectification of the Register of Copyrights by—

(a) the making of any entry wrongly omitted to be made in the register, or

(b) the expunging of any entry wrongly made in, or remaining on, the register, or

(c) the correction of any error or defect in the register.

CHAPTER XI

INFRINGEMENT OF COPYRIGHT

When copy-
right infrin-
ged.

51. Copyright in a work shall be deemed to be infringed—

(a) when any person, without a licence granted by the owner of the Copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority under this Act—

(i) does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright, or

(ii) permits for profit any place to be used for the performance of the work in public where such performance constitutes an infringement of the copyright in the work unless he was not aware and had no reasonable ground for believing that such performance would be an infringement of copyright, or

(b) when any person—

(i) makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or

(ii) distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, or

(iii) by way of trade exhibits in public, or

(iv) imports (except for the private and domestic use of the importer) into India,

any infringing copies of the work.

Explanation.—For the purposes of this section, the reproduction of a literary, dramatic, musical or artistic work in the form of a cinematograph film shall be deemed to be an “infringing copy”.

Certain acts
not to be
infringement
of copyright.

52. (1) The following acts shall not constitute an infringement of copyright, namely:—

(a) a fair dealing with a literary, dramatic, musical or artistic work for the purposes of—

(i) research or private study;

(ii) criticism or review, whether of that work or of any other work;

- (b) a fair dealing with a literary, dramatic, musical or artistic work for the purpose of reporting current events—
 - (i) in a newspaper, magazine or similar periodical, or
 - (ii) by radio-diffusion or in a cinematograph film or by means of photographs;
- (c) the reproduction of a literary, dramatic, musical or artistic work for the purpose of a judicial proceeding or for the purpose of a report of a judicial proceeding;
- (d) the reproduction or publication of a literary, dramatic, musical or artistic work in any work prepared by the Secretariat of a Legislature or, where the Legislature consists of two Houses, by the Secretariat of either House of the Legislature, exclusively for the use of the members of that Legislature;
- (e) the reproduction of any literary, dramatic or musical work in a certified copy made or supplied in accordance with any law for the time being in force;
- (f) the reading or recitation in public of any reasonable extract from a published literary or dramatic work;

(g) the publication in a collection, mainly composed of non-copyright matter, *bona fide* intended for the use of educational institutions, and so described in the title and in any advertisement issued by or on behalf of the publisher, of short passages from published literary or dramatic works, not themselves published for the use of educational institutions, in which copyright subsists:

Provided that not more than two such passages from works by the same author are published by the same publisher during any period of five years.

Explanation.—In the case of a work of joint authorship, references in this clause to passages from works shall include references to passages from works by any one or more of the authors of those passages or by any one or more of those authors in collaboration with any other person;

- (h) the reproduction of a literary, dramatic, musical or artistic work—
 - (i) by a teacher or a pupil in the course of instruction;
 - or
 - (ii) as part of the questions to be answered in an examination; or
 - (iii) in answers to such questions;
 - (i) the performance in the course of the activities of an educational institution, of a literary, dramatic or musical work

by the staff and students of the institution, or of a cinematograph film or a record, if the audience is limited to such staff and students, the parents and guardians of the students and persons directly connected with the activities of the institution;

(j) the making of records in respect of any literary dramatic or musical work, if—

(i) records recording that work have previously been made by, or with the licence or consent of, the owner of the copyright in the work; and

(ii) the person making the records has given the prescribed notice of his intention to make the records, and has paid in the prescribed manner to the owner of the copyright in the work royalties in respect of all such records to be made by him, at the rate fixed by the Copyright Board in this behalf:

Provided that in making the records such person shall not make any alterations in, or omissions from, the work, unless records recording the work subject to similar alterations and omissions have been previously made by, or with the licence or consent of, the owner of the copyright or unless such alterations and omissions are reasonably necessary for the adaptation of the work to the records in question;

(k) the causing of a recording embodied in a record to be heard in public by utilising the record,—

(i) at any premises where persons reside, as part of the amenities provided exclusively or mainly for residents therein, or

(ii) as part of the activities of a club, society or other organisation which is not established or conducted for profit;

(l) the performance of a literary, dramatic or musical work by an amateur club or society, if the performance is given to a non-paying audience, or for the benefit of a religious institution;

(m) the reproduction in a newspaper, magazine or other periodical of an article on current economic, political, social or religious topics, unless the author of such article has expressly reserved to himself the right of such reproduction;

(n) the publication in a newspaper, magazine or other periodical of a report of a lecture delivered in public;

(o) the making of not more than three copies of a book (including a pamphlet, sheet of music, map, chart or plan) by or under the direction of the person in charge of a public library for the use of the library if such book is not available for sale in India;

(p) the reproduction, for the purpose of research or private study or with a view to publication, of an unpublished literary, dramatic or musical work kept in a library, museum or other institution to which the public has access:

Provided that where the identity of the author of any such work or, in the case of a work of joint authorship, of any of the authors is known to the library, museum or other institution, as the case may be, the provisions of this clause shall apply only if such reproduction is made at a time more than fifty years from the date of the death of the author or, in the case of a work of joint authorship, from the death of the author whose identity is known or, if the identity of more authors than one is known from the death of such of those authors who dies last;

(q) the reproduction or publication of—

(i) any matter which has been published in any Official Gazette except an Act of a Legislature;

(ii) any Act of a Legislature subject to the condition that such Act is reproduced or published together with any commentary thereon or any other original matter;

(iii) the report of any committee, commission, council, board or other like body appointed by the Government if such report has been laid on the Table of the Legislature, unless the reproduction or publication of such report is prohibited by the Government;

(iv) any judgment or order of a court, tribunal or other judicial authority, unless the reproduction or publication of such judgment or order is prohibited by the court, the tribunal or other judicial authority, as the case may be;

(r) the production or publication of a translation in any Indian language of an Act of a Legislature and of any rules or orders made thereunder—

(i) if no translation of such Act or rules or orders in that language has previously been produced or published by the Government; or

(ii) where a translation of such Act or rules or orders in that language has been produced or published by the Government, if the translation is not available for sale to the public:

Provided that such translation contains a statement at a prominent place to the effect that the translation has not been authorised or accepted as authentic by the Government;

(s) the making or publishing of a painting, drawing, engraving or photograph of an architectural work of art;

(t) the making or publishing of a painting, drawing, engraving or photograph of a sculpture, or other artistic work falling under sub-clause (iii) of clause (c) of section 2, if such work is permanently situate in a public place or any premises to which the public has access;

(u) the inclusion in a cinematograph film of—

(i) any artistic work permanently situate in a public place or any premises to which the public has access; or

(ii) any other artistic work, if such inclusion is only by way of background or is otherwise incidental to the principal matters represented in the film;

(v) the use by the author of an artistic work, where the author of such work is not the owner of the copyright therein, of any mould, cast, sketch, plan, model or study made by him for the purpose of the work:

Provided that he does not thereby repeat or imitate the main design of the work;

(w) the making of an object of any description in three dimensions of an artistic work in two dimensions, if the object would not appear, to persons who are not experts in relation to objects of that description, to be a reproduction of the artistic work;

(x) the reconstruction of a building or structure in accordance with the architectural drawings or plans by reference to which the building or structure was originally constructed:

Provided that the original construction was made with the consent or licence of the owner of the copyright in such drawings and plans;

(y) in relation to a literary, dramatic or musical work recorded or reproduced in any cinematograph film, the exhibition of such film after the expiration of the term of copyright therein:

Provided that the provisions of sub-clause (ii) of clause (a), sub-clause (i) of clause (b) and clauses (d), (f), (g), (m) and (p) shall not apply as respects any act unless that act is accompanied by an acknowledgment—

(i) identifying the work by its title or other description; and

(ii) unless the work is anonymous or the author of the work has previously agreed or required that no acknowledgement of his name should be made, also identifying the author.

(2) The provisions of sub-section (1) shall apply to the doing of any act in relation to the translation of a literary, dramatic or musical work or the adaptation of a literary, dramatic, musical or artistic work as they apply in relation to the work itself.

53. (1) The Registrar of Copyrights, on application by the owner of the copyright in any work or by his duly authorised agent and on payment of the prescribed fee, may, after making such inquiry as he deems fit, order that copies made out of India of the work which if made in India would infringe copyright shall not be imported.

(2) Subject to any rules made under this Act, the Registrar of Copyrights or any person authorised by him in this behalf may enter any ship, dock or premises where any such copies as are referred to in sub-section (1) may be found and may examine such copies.

(3) All copies to which any order made under sub-section (1) applies shall be deemed to be goods of which the import has been prohibited or restricted under section 19 of the Sea Customs Act, 1878, and all the provisions of that Act shall have effect accordingly:

Provided that all such copies confiscated under the provisions of the said Act shall not vest in the Government but shall be delivered to the owner of the copyright in the work.

CHAPTER XII

CIVIL REMEDIES

54. For the purposes of this Chapter, unless the context otherwise requires, the expression "owner of copyright" shall include—

(a) an exclusive licensee;

(b) in the case of an anonymous or pseudonymous literary, dramatic, musical or artistic work, the publisher of the work, until the identity of the author or, in the case of an anonymous work of joint authorship, or a work of joint authorship published under names all of which are pseudonyms, the identity of any of the authors, is disclosed publicly by the author and the publisher or is otherwise established to the satisfaction of the Copyright Board by that author or his legal representatives.

Civil remedies for infringement of copyright. 55. (1) Where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of injunction, damages, accounts and otherwise as are or may be conferred by law for the infringement of a right:

Provided that if the defendant proves that at the date of the infringement he was not aware and had no reasonable ground for believing that copyright subsisted in the work, the plaintiff shall not be entitled to any remedy other than an injunction in respect of the infringement and a decree for the whole or part of the profits made by the defendant by the sale of the infringing copies as the court may in the circumstances deem reasonable.

(2) Where, in the case of a literary, dramatic, musical or artistic work, a name purporting to be that of the author or the publisher, as the case may be, appears on copies of the work as published, or in the case of an artistic work, appeared on the work when it was made, the person whose name so appears or appeared shall, in any proceeding in respect of infringement of copyright in such work, be presumed, unless the contrary is proved, to be the author or the publisher of the work, as the case may be.

(3) The costs of all parties in any proceedings in respect of the infringement of copyright shall be in the discretion of the court.

Protection of separate rights.

56. Subject to the provisions of this Act, where the several rights comprising the copyright in any work are owned by different persons, the owner of any such right shall, to the extent of that right, be entitled to the remedies provided by this Act and may individually enforce such right by means of any suit, action or other proceeding without making the owner of any other right a party to such suit, action or proceeding.

Author's special rights.

57. (1) Independently of the author's copyright, and even after the assignment either wholly or partially of the said copyright, the author of a work shall have the right to claim the authorship of the work as well as the right to restrain, or claim damages in respect of,—

(a) any distortion, mutilation or other modification of the said work; or

(b) any other action in relation to the said work which would be prejudicial to his honour or reputation.

(2) The right conferred upon an author of a work by sub-section (1), other than the right to claim authorship of the work, may be exercised by the legal representatives of the author.

58. All infringing copies of any work in which copyright subsists, and all plates used or intended to be used for the production of such infringing copies, shall be deemed to be the property of the owner of the copyright, who accordingly may take proceedings for the recovery of possession thereof or in respect of the conversion thereof:

Provided that the owner of the copyright shall not be entitled to any remedy in respect of the conversion of any infringing copies, if the opponent proves—

(a) that he was not aware and had no reasonable ground to believe that copyright subsisted in the work of which such copies are alleged to be infringing copies; or

(b) that he had reasonable grounds for believing that such copies or plates do not involve infringement of the copyright in any work.

59. (1) Notwithstanding anything contained in the Specific Relief Act, 1877, where the construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work has been commenced, the owner of the copyright shall not be entitled to obtain an injunction to restrain the construction of such building or structure or to order its demolition.

(2) Nothing in section 58 shall apply in respect of the construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work.

60. Where any person claiming to be the owner of copyright in any work, by circulars, advertisements or otherwise, threatens any other person with any legal proceedings or liability in respect of an alleged infringement of the copyright, any person aggrieved thereby may, notwithstanding anything contained in section 42 of the Specific Relief Act, 1877, institute a declaratory suit that the alleged infringement to which the threats related was not in fact an infringement of any legal rights of the person making such threats and may in any such suit—

(a) obtain an injunction against the continuance of such threats; and

(b) recover such damages, if any, as he has sustained by reason of such threats:

Provided that this section shall not apply if the person making such threats, with due diligence, commences and prosecutes an action for infringement of the copyright claimed by him.

Owner of copyright to be party to the proceeding. 61. (1) In every civil suit or other proceeding regarding infringement of copyright instituted by an exclusive licensee, the owner of the copyright shall, unless the court otherwise directs, be made a defendant and where such owner is made a defendant, he shall have the right to dispute the claim of the exclusive licensee.

(2) Where any civil suit or other proceeding regarding infringement of copyright instituted by an exclusive licensee is successful, no fresh suit or other proceeding in respect of the same cause of action shall lie at the instance of the owner of the copyright.

Jurisdiction of court over matters arising under this Chapter. 62. (1) Every suit or other civil proceeding arising under this Chapter in respect of the infringement of copyright in any work or the infringement of any other right conferred by this Act shall be instituted in the district court having jurisdiction.

(2) For the purpose of sub-section (1), a "district court having jurisdiction" shall, notwithstanding anything contained in the Code of Civil Procedure, 1908, or any other law for the time being in force, ^{5 of 1908} include a district court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or other proceeding or, where there are more than one such persons, any of them actually and voluntarily resides or carries on business or personally works for gain.

CHAPTER XIII

OFFENCES

Offence of infringement of copyright or other rights conferred by this Act. 63. Any person who knowingly infringes or abets the infringement of—

- (a) the copyright in a work, or
- (b) any other right conferred by this Act,

shall be punishable with imprisonment which may extend to one year, or with fine, or with both.

Explanation.—Construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work shall not be an offence under this section.

Power of police to seize infringing copies. 64. (1) Where a magistrate has taken cognizance of any offence under section 63 in respect of the infringement of copyright in any work, it shall be lawful for any police officer, not below the rank of sub-inspector, to seize without any warrant from the magistrate, all copies of the work wherever found, which appear to him to be infringing copies of the work and all copies so seized shall, as soon as practicable, be produced before the magistrate.

(2) Any person having an interest in any copies of a work seized under sub-section (1) may, within fifteen days of such seizure, make an application to the magistrate for such copies being restored to him and the magistrate, after hearing the applicant and the complainant and making such further inquiry as may be necessary, shall make such order on the application as he may deem fit.

65. Any person who knowingly makes, or has in his possession, Possession of any plate for the purpose of making infringing copies of any work plates for in which copyright subsists shall be punishable with imprisonment purpose of making infringing which may extend to one year, or with fine, or with both. copies.

66. The court trying any offence under this Act may, whether Disposal of the alleged offender is convicted or not, order that all copies of the work or all plates in the possession of the alleged offender, which appear to it to be infringing copies, or plates for the purpose of making infringing copies, be delivered up to the owner of the copy-right.

67. Any person who,—

(a) makes or causes to be made a false entry in the Register of Copyrights kept under this Act, or

(b) makes or causes to be made a writing falsely purporting to be a copy of any entry in such register, or

(c) produces or tenders or causes to be produced or tendered as evidence any such entry or writing, knowing the same to be false,

Penalty for making false entries in register, etc., for producing or tendering false entries.

shall be punishable with imprisonment which may extend to one year, or with fine, or with both.

68. Any person who,—

(a) with a view to deceiving any authority or officer in the execution of the provisions of this Act, or

(b) with a view to procuring or influencing the doing or omission of anything in relation to this Act or any matter thereunder,

Penalty for making false statements for the purpose of deceiving or influencing any authority or officer.

makes a false statement or representation knowing the same to be false, shall be punishable with imprisonment which may extend to one year, or with fine, or with both.

69. (1) Where any offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for, the conduct of the business of the company as well as the company,

shall be deemed to be guilty of such offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company, and it is proved that the offence was committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

*Explanation.—*For the purposes of this section—

(a) "company" means any body corporate and includes a firm or other association of persons; and

(b) "director" in relation to a firm means a partner in the firm.

Cognizance of offences. 70. No court inferior to that of a presidency magistrate or a magistrate of the first class shall try any offence under this Act.

CHAPTER XIV

APPEALS

Appeals against certain orders of magistrate. 71. Any person aggrieved by an order made under sub-section (2) of section 64 or section 66 may, within thirty days of the date of such order, appeal to the court to which appeals from the court making the order ordinarily lie, and such appellate court may direct that execution of the order be stayed pending disposal of the appeal.

Appeals against orders of Registrar of Copyrights and Copyright Board. 72. (1) Any person aggrieved by any final decision or order of the Registrar of Copyrights may, within three months from the date of the order or decision, appeal to the Copyright Board.

(2) Any person aggrieved by any final decision or order of the Copyright Board, not being a decision or order made in an appeal under sub-section (1), may, within three months from the date of such decision or order, appeal to the High Court within whose jurisdiction the appellant actually and voluntarily resides or carries on business or personally works for gain:

Provided that no such appeal shall lie against a decision of the Copyright Board under section 6.

(3) In calculating the period of three months provided for an appeal under this section, the time taken in granting a certified copy of the order or record of the decision appealed against shall be excluded.

73. The High Court may make rules consistent with this Act as Procedure to the procedure to be followed in respect of appeals made to it ^{for appeals} under section 72.

CHAPTER XV

MISCELLANEOUS

74. The Registrar of Copyrights and the Copyright Board shall have the powers of a civil court when trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) requisitioning any public record or copy thereof from any court or office;
- (f) any other matter which may be prescribed.

Explanation.—For the purpose of enforcing the attendance of witnesses, the local limits of the jurisdiction of the Registrar of Copyrights or the Copyright Board, as the case may be, shall be the limits of the territory of India.

75. Every order made by the Registrar of Copyrights or the Orders for Copyright Board under this Act for the payment of any money or payment of money passed by the High Court in any appeal against any such order of the Copyright Board shall, on a certificate issued by the Registrar of Copyrights, the Copyright Board or the Registrar of the High Court, as the case may be, be deemed to be a decree of a civil court and shall be executable in the same manner as a decree of such court.

76. No suit or other legal proceeding shall be against any person in respect of anything which is in good faith done or intended to be done in pursuance of this Act.

Certain persons to be public servants.

Power to make rules.

77. Every officer appointed under this Act and every member of the Copyright Board shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

45 of
78. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, the Central Government may make rules to provide for all or any of the following matters, namely:—

(a) the term of office and conditions of service of the Chairman and other members of the Copyright Board;

(b) the form of complaints and applications to be made, and the licences to be granted, under this Act;

(c) the procedure to be followed in connection with any proceeding before the Registrar of Copyrights;

(d) the manner of determining any royalties payable under this Act, and the security to be taken for the payment of such royalties;

(e) the form of Register of Copyrights to be kept under this Act and the particulars to be entered therein;

(f) the matters in respect of which the Registrar of Copyrights and the Copyright Board shall have powers of a civil court;

(g) the fees which may be payable under this Act;

(h) the regulation of business of the Copyright Office and of all things by this Act placed under the direction or control of the Registrar of Copyrights.

(3) All rules made under this section shall, as soon as may be after they are made, be laid before both Houses of Parliament for not less than thirty days and shall be subject to such modifications as Parliament may make during the session in which they are so laid or the session immediately following.

Repeals, savings, and transitional provisions.

79. (1) The Indian Copyright Act, 1914, and the Copyright Act 3 of 1911 passed by the Parliament of the United Kingdom as modified in its application to India by the Indian Copyright Act, 1914, are 3 of 1911 hereby repealed.

(2) Where any person has, before the commencement of this Act, taken any action whereby he has incurred any expenditure or liabilities in connection with the reproduction or performance of any work in a manner which at the time was lawful or for the purpose of or with a view to the reproduction or performance of a work at a time when such reproduction or performance would, but for

the coming into force of this Act, have been lawful, nothing in this section shall diminish or prejudice any rights or interests arising from or in connection with such action which are subsisting and valuable at the said date, unless the person who, by virtue of this Act, becomes entitled to restrain such reproduction or performance agrees to pay such compensation as, failing agreement, may be determined by the Copyright Board.

(3) Copyright shall not subsist by virtue of this Act in any work in which copyright did not subsist immediately before the commencement of this Act under any Act repealed by sub-section (1).

(4) Where copyright subsisted in any work immediately before the commencement of this Act, the rights comprising such copyright shall, as from the date of such commencement, be the rights specified in section 14 in relation to the class of works to which such work belongs, and where any new rights are conferred by that section, the owner of such rights shall be—

(a) in any case where copyright in the work was wholly assigned before the commencement of this Act, the assignee or his successor-in-interest;

(b) in any other case, the person who was the first owner of the copyright in the work under any Act repealed by sub-section (1) or his legal representatives.

(5) Except as otherwise provided in this Act, where any person is entitled immediately before the commencement of this Act to copyright in any work or any right in such copyright or to an interest in any such right, he shall continue to be entitled to such right or interest for the period for which he would have been entitled thereto if this Act had not come into force.

(6) Nothing contained in this Act shall be deemed to render any act done before its commencement an infringement of copyright if that act would not otherwise have constituted such an infringement.

(7) Save as otherwise provided in this section, nothing in this section shall be deemed to affect the application of the General Clauses Act, 1897, with respect to the effect of repeals.

भारत का राजपत्र

The Gazette of India



वृषाधरण
EXTRAORDINARY

भाग II—खण्ड 2
PART II—Section 2

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इस भाग में भिन्न पृष्ठ संख्या वाली जाती है जिससे कि यह अलग संकलन
के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed
as a separate compilation

RAJYA SABHA

The following Bill was introduced in the Rajya Sabha on the 5th November, 1982:—

BILL No. XLI OF 1982

A Bill to amend the Copyright Act, 1957.

BE it enacted by Parliament in the Thirty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Copyright (Amendment) Act, 1982.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

14 of 1957.

2. Throughout the Copyright Act, 1957 (hereinafter referred to as the principal Act), unless otherwise expressly provided, for the word "radio-diffusion", wherever it occurs, the word "broadcast" shall be substituted.

Substitution of expression "radio-diffusion" by expression "broadcast".

3. In section 2 of the principal Act,—

Amendment of section 2.

(a) after clause (d), the following clause shall be inserted, namely:—

(dd) “broadcast” means communication to the public—

(i) by any means of wireless diffusion, whether in any one or more of the forms of signs, sounds or visual images; or

(ii) by wire,

and includes a re-broadcast;;

(b) after clause (f), the following clause shall be inserted, namely:—

(ff) “communication to the public” means communication to the public in whatever manner, including communication through satellite;’;

(c) for clause (l), the following clause shall be substituted, namely:—

(l) “Indian work” means a literary, dramatic or musical work,—

(i) the author of which is a citizen of India; or

(ii) which is first published in India; or

(iii) the author of which, in the case of an unpublished work, is, at the time of the making of the work, a citizen of India;’;

(d) clause (v) shall be omitted.

**Amend-
ment of
section 3.**

4. In section 3 of the principal Act, in clause (a), for the words “work to the public in sufficient quantities”, the words “work, either in whole or in part, to the public in a manner sufficient to satisfy the reasonable requirements of the public having regard to the nature of the work” shall be substituted.

**Amend-
ment of
section 6.**

5. In section 6 of the principal Act, for clause (a), the following clause shall be substituted, namely:—

“(a) whether for the purposes of section 3, copies of any,—

(i) literary, dramatic, musical or artistic work are issued to the public in a manner sufficient to satisfy the reasonable requirements of the public; or

(ii) records are issued to the public in sufficient quantities; or”.

**Amend-
ment of
section
12.**

6. In section 12 of the principal Act, in sub-section (7), for the words and figures “sections 480 and 482 of the Code of Criminal Procedure, 1898”, the words and figures “sections 345 and 346 of the Code of Criminal Procedure, 1973” shall be substituted.

5 of 1898.

2 of 1974.

**Amend-
ment of
section
15.**

7. In section 15 of the principal Act, the words “Indian Patents and”, at both the places where they occur, shall be omitted.

**Amend-
ment of
section
17.**

8. In section 17 of the principal Act,—

(a) after clause (c), the following clause shall be inserted, namely:—

“(cc) in the case of any address or speech delivered in public, the person who has delivered such address or speech or if such person has delivered such address or speech on behalf

of any other person, such other person shall be the first owner of the copyright therein notwithstanding that such person is employed by any other person who arranges such address or speech or on whose behalf or premises such address or speech is delivered;”;

(b) after clause (d), the following clause and *Explanation* shall be inserted, namely:—

‘(dd) in the case of a work made or first published by or under the direction or control of any body corporate, such body corporate shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein.

Explanation.—For the purposes of this clause and section 28A, “body corporate” includes a firm or other association of persons.’

9. Section 19 of the principal Act shall be re-numbered as sub-section (1) thereof and after sub-section (1) as so re-numbered, the following sub-section shall be inserted, namely:—

“(2) The assignment of the copyright in any work shall, among other things, indicate clearly the rights proposed to be assigned and the size of the work.”.

10. After section 19 of the principal Act, the following section shall be inserted, namely:—

“19A. Where any dispute arises with respect to the assignment of, or any of the terms of the assignment of, any copyright, the Copyright Board may, on receipt of a complaint from any of the parties to the dispute and after holding such inquiry as it may deem necessary, pass such orders as it may deem fit, including orders by way of giving permission to the owner of the copyright to revoke its assignment if the terms of the assignment are harsh to him or if the publisher unduly delays the publication of the work or by way of issue of a certificate for the recovery of any royalty due to the owner.”.

11. After section 28 of the principal Act, the following section shall be inserted, namely:—

“28A. In the case of a work, where a body corporate is the first owner of the copyright therein, copyright shall subsist until fifty years from the beginning of the calendar year next following the year in which the work is first published.”.

12. After section 31 of the principal Act, the following section shall be inserted, namely:—

“31A. (1) Where, in the case of an unpublished work, the author is dead or unknown or cannot be traced, or the owner of the copyright in such work cannot be found, any person may apply to the Copyright Board for a licence to publish such work or a translation thereof in any language.

(2) Before making an application under sub-section (1), the applicant shall publish his proposal in one issue of a daily news-

Amend-
ment of
section
19.

Inser-
tion of
new
section
19A.

Disputes
with res-
pect to
assign-
ment of
copyright.

Insertion
of new
section
28A.

Term of
copy-
right in
works of
body cor-
porate.

Insertion
of new
section
31A.

Compu-
lso-
ry
licence in
unpub-
lished
works

paper in the English language having circulation in the major part of the country and where the application is for the publication of a translation in any language, also in one issue of any daily newspaper in that language.

(3) Every such application shall be made in such form as may be prescribed and shall be accompanied with a copy of the advertisement issued under sub-section (2) and such fee as may be prescribed.

(4) Where an application is made to the Copyright Board under this section, it may, after holding such inquiry as may be prescribed direct the Registrar of Copyrights to grant to the applicant a licence to publish the work or a translation thereof in the language mentioned in the application subject to the payment of such royalty and subject to such other terms and conditions as the Copyright Board may determine, and thereupon the Registrar of Copyrights shall grant the licence to the applicant in accordance with the direction of the Copyright Board.

(5) Where a licence is granted under this section, the Registrar of Copyrights may, by order, direct the applicant to deposit the amount of the royalty determined by the Copyright Board in the public account of India or in any other account specified by the Copyright Board so as to enable the owner of the copyright or, as the case may be, his heirs, executors or the legal representatives to claim such royalty at any time.

(6) Without prejudice to the foregoing provisions of this section, in the case of an unpublished Indian work, if the original author is dead, the Copyright Board may, if it considers that the publication of the work is desirable in the national interest, require the heirs, executors or legal representatives of the author to publish such work within such period as may be specified by it.

(7) Where any work is not published within the period specified by the Copyright Board under sub-section (6), it may, on an application made by any person for permission to publish the work and after hearing the parties concerned permit such publication on payment of such royalty as the Copyright Board may, in the circumstances of such case, determine in the prescribed manner.”.

13 In section 32 of the principal Act,—

(a) in sub-section (1),—

(i) after the words “in any language”, the words “after a period of seven years from the first publication of the work” shall be inserted;

(ii) the following provisos shall be inserted at the end, namely:—

“Provided that where the translation of any such work which is not an Indian work is required for the purposes of teaching, scholarship or research, such application may be made after a period of three years from such publication;

Provided further that where the translation referred to in the preceding proviso is in a language not in general use in any developed country, such application may be made after a period of one year from such publication.”;

(b) in sub-section (4),—

(i) in the opening paragraph, for the portion beginning with the words "the application, on condition that the applicant" and ending with the words "in the prescribed manner:", the following shall be substituted, namely:—

"the application—

(i) subject to the condition that the applicant shall pay to the owner of the copyright in the work royalties in respect of copies of the translation of the work sold to the public, calculated at such rate as the Copyright Board may, in the circumstances of each case, determine in the prescribed manner; and

(ii) where such licence is granted on an application under either of the provisos to sub-section (1), subject also to the condition that the licence shall not extend to the export of copies of the translation of the work outside India and every copy of such translation shall contain a notice in the language of such translation that the copy is available for distribution only in India:

Provided that nothing in clause (ii) shall apply to the export by Government or any authority under the Government of copies of such translation in a language other than English, French or Spanish to any country if—

(1) such copies are sent to citizens of India residing outside India or to any association of such citizens outside India; or

(2) such copies are meant to be used for purposes of teaching, scholarship or research and not for any commercial purpose; and

(3) in either case, the permission for such export has been given by the Government of that country:";

(ii) in the proviso,—

(1) for the words "Provided that", the words "Provided further that" shall be substituted;

(2) in clause (a), for the words "within seven years of the first publication of the work", the words "within seven years or three years or one year, as the case may be, of the first publication of the work" shall be substituted;

(3) in clause (b), for the words "he was unable to find", the words "he was, after due diligence on his part, unable to find" shall be substituted;

(4) in clause (c),—

(A) for the words "such authorisation to the publisher whose name appears from the work", the words, brackets and figure "such authorisation by registered air mail post to the publisher whose name appears from the work, and in the case of an application for licence under sub-section (1) (not being an application under either of the provisos thereto)" shall be substituted;

(B) for the words "the application for the licence", the words "such application" shall be substituted;

(5) after clause (c), the following clauses shall be inserted, namely:—

"(cc) a period of six months in the case of an application under the first proviso to sub-section (1), or nine months in the case of an application under the second proviso to that sub-section has elapsed from the date of making the request under clause (b) of this proviso, or where a copy of the request has been sent under clause (c) of this proviso, from the date of sending of such copy, and the translation of the work in the language mentioned in the application has not been published by the owner of the copyright in the work or any person authorised by him within the said period of six months or nine months, as the case may be;

(ccc) in the case of an application made under either of the provisos to sub-section (1), if the work is composed mainly of illustrations, the provisions of section 32A are also complied with;";

(c) after sub-section (4), the following sub-sections and *Explanation* shall be inserted, namely:—

'(5) Any broadcasting authority may apply to the Copyright Board for a licence to produce and publish the translation of—

(a) a work referred to in the provisos to sub-section (1); or

(b) Any text incorporated in audio-visual fixations prepared and published solely for the purpose of systematic instructional activities for broadcasting such translation for the purposes of teaching or for the dissemination of the results of specialised, technical or scientific research to the experts in any particular field.

(6) The provisions of sub-sections (2) to (4) shall, so far as may be, apply to the grant of a licence under sub-section (5) and such licence shall not also be granted unless—

- (a) the translation is made from a work lawfully acquired;
- (b) the broadcast is made through the medium of sound and visual recordings;
- (c) such recording has been lawfully and exclusively made for the purpose of broadcasting in India by the applicant or by any other broadcasting agency; and
- (d) the translation and the broadcasting of such translation are not used for any commercial purposes.

Explanation.—For the purposes of this section,—

- (a) “developed country” means a country which is not a developing country;
- (b) “developing country” means a country which is for the time being regarded as such in conformity with the practice of the General Assembly of the United Nations;
- (c) “purposes of research” does not include purposes of industrial research, or purposes of research by bodies corporate (not being bodies corporate owned or controlled by Government) or other associations or body of persons for commercial purposes;
- (d) “purposes of teaching, research or scholarship” includes—
 - (i) purposes of instructional activity at all levels in educational institutions, including Schools, Colleges, Universities and tutorial institutions; and
 - (ii) purposes of all other types of organised educational activity.”.

14. In Chapter VI of the principal Act, after section 32, the following sections shall be inserted, namely:—

Inser-
tion of
new sec-
tions 32A
and 32B.

“32A. (1) Where,—

- (a) after the expiration of the relevant period from the date of the first publication of an edition of a literary, scientific or artistic work, the copies of such edition are not made available in India; or
- (b) such copies have not been put on sale in India for a period of six months,

Licence to
reproduce
and pub-
lish
works
for
certain
purposes.

to the general public, or in connection with systematic instructional activities at a price reasonably related to that normally charged in India for comparable works by the owner of the right of reproduction or by any person authorised by him in this behalf, any person may apply to the Copyright Board for a licence to reproduce and publish such work in printed or analogous forms of reproduction at the price at which such edition is sold or at a lower price for the purposes of systematic instructional activities.

(2) Every such application shall be made in such form as may be prescribed and shall state the proposed retail price of a copy of the work to be reproduced.

(3) Every applicant for a licence under this section shall, along with his application, deposit with the Registrar of Copyrights such fee as may be prescribed.

(4) Where an application is made to the Copyright Board under this section, it may, after holding such inquiry as may be prescribed, grant to the applicant a licence, not being an exclusive licence, to produce and publish a reproduction of the work mentioned in the application subject to the conditions that,—

(i) the applicant shall pay to the owner of the copyright in the work royalties in respect of copies of the reproduction of the work sold to the public, calculated at such rate as the Copyright Board may, in the circumstances of each case, determine in the prescribed manner;

(ii) a licence granted under this section shall not extend to the export of copies of the reproduction of the work outside India and every copy of such reproduction shall contain a notice that the copy is available for distribution only in India:

Provided that no licence shall be granted unless—

(a) the applicant has proved to the satisfaction of the Copyright Board that he had requested and had been denied, authorisation by the owner of the copyright in the work to reproduce and publish such work or that he was, after due diligence on his part, unable to find such owner;

(b) where the applicant was unable to find the owner of the copyright, he had sent a copy of his request for such authorisation by registered air-mail post to the publisher whose name appears from the work not less than three months before the application for the licence;

(c) the Copyright Board is satisfied that the applicant is competent to reproduce and publish an accurate reproduction of the work and possesses the means to pay to the owner of the copyright the royalties payable to him under this section;

(d) the applicant undertakes to reproduce and publish the work at such price as may be fixed by the Copyright Board, being a price reasonably related to the price normally charged in India for works of the same standard on the same or similar subjects;

(e) in the case of an application for the reproduction and publication of any work of natural science, physical science, mathematics or technology, a period of six months has elapsed from the date of making the request under clause (a), or where a copy of the request has been sent under clause (b), from the date of sending of a copy, and a reproduction of the work has not been published by the owner of the copyright in the work or any person authorised by him within the said period of six months;

(f) the name of the author and the title of the particular edition of the work proposed to be reproduced shall be printed on all the copies of the reproduction;

(g) the author has not withdrawn from circulation copies of the work; and

(h) an opportunity of being heard is given, wherever practicable, to the owner of the copyright in the work.

(5) No licence to reproduce and publish a translation of a work in a language shall be granted under this section unless such translation in that language has been published by the owner of the right of translation or any person authorised by him and the language of the translation is a language in general use in India.

(6) The provisions of this section shall also apply to the reproduction and publication, or translation into a language in general use in India, of any text incorporated in audio-visual fixations solely for the purpose of systematic instructional activities.

Explanation.—For the purposes of this section, “relevant period”, in relation to any work, means a period of—

(a) seven years from the date of the first publication of that work, where the application is for the reproduction and publication of any work of, or relating to, fiction, poetry, drama, music or art;

(b) three years from the date of the first publication of that work, where the application is for the reproduction and publication of any work of, or relating to, natural science, physical science, mathematics or technology; and

(c) five years from the date of the first publication of that work, in any other case.

Termination of licences issued under this Chapter.

32B. (1) If, at any time after the granting of a licence to produce and publish the translation of a work in any language under the provisos to sub-section (1) of section 32 (hereafter in this sub-section referred to as the licensed work), the owner of the copyright in the work or any person authorised by him publishes a translation of such work in the same language and which is substantially the same in content at a price reasonably related to the price normally charged in India for the translation of works of the same standard on the same or similar subject, the licence so granted shall be terminated:

Provided that no such termination shall take effect until after the expiry of a period of three months from the date of service of a notice in the prescribed manner on the person holding such licence by the owner of the right of translation intimating the publication of the translation as aforesaid:

Provided further that copies of the licensed work produced and published by the person holding such licence before the termination of the licence takes effect may continue to be sold or distributed until the copies already produced and published are exhausted.

(2) If, at any time after the granting of a licence to produce and publish the reproduction or translation of any work under section 32A, the owner of the right of reproduction or any person authorised by him sells or distributes copies of such work or a translation thereof, as the case may be, in the same language and which is substantially the same in content at a price reasonably related to the price normally charged in India for works of the same standard on the same or similar subject, the licence so granted shall be terminated:

Provided that no such termination shall take effect until after the expiry of a period of three months from the date of service of a notice in the prescribed manner on the person holding the licence by the owner of the right of reproduction intimating the sale or distribution of the copies of the editions of work as aforesaid:

Provided further that any copies already reproduced by the licensee before such termination takes effect may continue to be sold or distributed until the copies already produced are exhausted.'

Amend-
ment of
section
37.

15. In sub-section (1) of section 37 of the principal Act, the words "by radio-diffusion" shall be omitted.

Amend-
ment of
section
48.

16. In section 45 of the principal Act, to sub-section (1), the following proviso shall be added, namely:—

"Provided that in respect of an artistic work which is used or is capable of being used in relation to any goods, the application shall include a statement to that effect and shall be accompanied by a certificate from the Registrar of Trade Marks referred to in section 4 of the Trade and Merchandise Marks Act, 1958, to the effect that no trade mark identical with or deceptively similar to such artistic work has been registered under that Act in the name of, or that no application has been made under that Act for such registration by, any person other than the applicant."

17. In Chapter X of the principal Act, after section 50, the following section shall be inserted, namely:—

“50A. Every entry made in the Register of Copyrights or the particulars of any work entered under section 45, the correction of every entry made in such register under section 49, and every rectification ordered under section 50, shall be published by the Registrar of Copyrights in the Official Gazette or in such other manner as he may deem fit.”.

18. In sub-section (1) of section 52 of the principal Act, in clause (b), the following *Explanation* shall be inserted at the end, namely:—

“*Explanation*.—The publication of a compilation of addresses or speeches delivered in public is not a fair dealing of such work within the meaning of this clause.”.

8 of 1878.
51 of 1962.

1 of 1877.
47 of 1963.

1 of 1877.
47 of 1963.

19. In sub-section (3) of section 53 of the principal Act, for the words and figures “under section 19 of the Sea Customs Act, 1878”, the words and figures “under section 11 of the Customs Act, 1962” shall be substituted.

20. In section 59 of the principal Act, in sub-section (1), for the words and figures “the Specific Relief Act, 1877”, the words and figures “the Specific Relief Act, 1963” shall be substituted.

21. In section 60 of the principal Act, for the words and figures “in section 42 of the Specific Relief Act, 1877”, the words and figures “in section 34 of the Specific Relief Act, 1963” shall be substituted.

22. In section 70 of the principal Act, for the words “a presidency magistrate or a magistrate of the first class”, the words “a Metropolitan Magistrate or a Judicial Magistrate of the first class” shall be substituted.

23. In section 78 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.”.

Insertion
of new
section
50A.

Entries
in the
Register
of Copy-
rights,
etc., to
be publi-
shed.

Amend-
ment of
section 52.

Amend-
ment of
section
53.

Amend-
ment of
section
59.

Amend-
ment of
section
60.

Amend-
ment of
section
70.

Amend-
ment of
section
78.

STATEMENT OF OBJECTS AND REASONS

India is a member of the two International Conventions on Copyright, namely, the Berne Convention for the Protection of Literary and Artistic Works (1948 Brussels Text) and the Universal Copyright Convention (1952). The Copyright Act, 1957, conforms to the provisions of these two Conventions. Both these Conventions were revised at Paris in 1971. These revised Conventions provide for certain additional facilities to enable the developing countries to grant compulsory licences for translation and reproduction of works of foreign origin required for purposes of teaching, scholarship or research or for purposes of systematic instructional activities, if these rights could not be obtained on freely negotiated terms under conditions enabling their publication or ensuring their availability at prices reasonable in their context. As a developing country, it will be in our interest to adhere to the two revised Conventions so as to avail of the benefits of the compulsory rights. It is accordingly proposed to suitably amend the Act to conform to the provisions of the revised Conventions and thereafter accede to the revised Conventions so that India can take advantage of the revised provisions of the two Conventions.

2. The working of the Act has also revealed certain lacunae and administrative drawbacks, especially in relation to the protection of authors' rights. There is also no provision in the Act at present for the publication of unpublished works of an Indian author who is either dead or unknown or whose whereabouts are not traceable or where the owner of the copyright cannot be located. It is proposed to make certain amendments in the Act to remove these lacunae and practical difficulties and to make certain additional provisions pertaining to authors' rights.

3. The Bill provides, among other things, for the following amendments to the Act to give effect to the above proposals, namely:—

(1) To provide for compulsory licensing for the translation of a foreign work after the expiry of three years from the publication of the work and if the translation of the work is in a language not in general use in any developed country, after the expiry of a period of one year from such publication if such work is required for the purposes of teaching, scholarship or research.

(2) To provide for the compulsory licensing of the reproduction of any edition of a foreign literary, scientific or artistic work for the purposes of systematic instructional activities if, after the expiry of certain periods (which will vary depending on the subject matter of the work) from the date of the first publication of that edition, the copies are not available in India at a price reasonably related to that normally charged in India for the same or similar work.

(3) It is proposed to provide that in the case of unpublished works where the author is either dead or unknown or the owners of

the copyright cannot be traced, any person wishing to publish the material or a translation thereof may advertise his proposal and thereafter apply to the Copyright Board for permission which, while granting such permission, would fix an appropriate royalty. The royalty could be deposited in the Public Account of India or in any other suitable place for a specific period so that in the event of the owner of the copyright becoming known, he could claim it. It is also proposed that in the case of unpublished Indian works where the original author is dead and the publication of the work is desirable in the national interest, a reasonable period would be given to his legal representatives to make necessary arrangements for the publication of the unpublished material. In case they fail to do so, the Copyright Board is empowered to give permission to publish the work on payment of royalty.

(4) It is proposed to provide for the manner of assignments of copyright from authors to publishers and to empower the Copyright Board to decide disputes arising out of such assignments which may extend to permitting the author to withdraw from the assignment.

(5) It is proposed to prescribe the term of copyright in works owned by bodies corporate as fifty years from the beginning of the calendar year next following the year in which the work is first published as in the case of Government works.

(6) Broadcasting authorities are also being permitted to translate foreign works for broadcasting for the purpose of systematic instructional activities.

(7) To provide for copyright in lectures, addresses, etc., delivered in public and for the publication of the entries made in Copyright Register.

4. The Bill seeks to achieve the above objects.

NEW DELHI;

The 2nd November, 1982.

SHEILA KAUL.

FINANCIAL MEMORANDUM

Clause 10 of the Bill, which seeks to insert a new section 19A in the Copyright Act, 1957 provides for settlement of disputes with respect to the assignment of copyright by the Copyright Board after holding such inquiry as it may deem necessary. Clauses 12 and 14, which seek to introduce new sections 31A and 32A respectively in the Act, provide for applications being made to the Copyright Board for compulsory licences for publication of unpublished works and for reproduction of foreign works. Clause 13, which seeks to amend existing section 32 of the Act, provides for licences being given for translation of any foreign work for the purposes of teaching, scholarship or research. The above provisions would require the strengthening of the administrative structure of the copyright office, *inter alia*, by the setting up of a licensing wing to handle the applications for grant of licences. The provision for the issue of licences would also require the setting up of a Copyright Information Centre mainly for the purpose of disseminating information in regard to procedures for obtaining copyright and for identifying the copyright owners of foreign works with whom negotiations would have to be undertaken for obtaining copyright. The additional expenditure that is likely to be incurred on this account is expected to be of the order of Rs. 2.0 lakhs per annum. This expenditure is, however, expected to be offset to a large extent by the revenues that may be realised from fees proposed to be levied on applications for the grant of licences and from the proposed increase in the registration fee and sale of published documents.

2. Some non-recurring expenditure is also likely to be involved on providing necessary equipment, furniture and other requirements for the new staff proposed to be appointed. It is not possible to estimate the precise expenditure that is likely to be incurred on this account.

3. The Bill would not involve any other expenditure, either recurring or non-recurring.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clauses 12 and 14 of the Bill, which propose to introduce new sections 31A and 32A in the Copyright Act, 1957 provide for application being made to the Copyright Board for licences to publish unpublished works and to publish reproduction of foreign works respectively. Clause 13 of the Bill amends section 32 of the Act to enable any person to apply to the Copyright Board for a licence to translate any foreign work for the purposes of teaching, scholarship or research. The form in which the applications for such licences may be made, the fees that shall be payable along with such applications, the manner in which an inquiry may be made by the Copyright Board before granting the licence and the determination by the Copyright Board of royalties payable for such licences shall be such as may be prescribed by rules made under the Act.

2. The above matters with respect to which rules may be made are matters of procedure or administrative detail and the Act already makes provision for such matters being prescribed by rules in respect of applications for licences which may now be made under the Act.

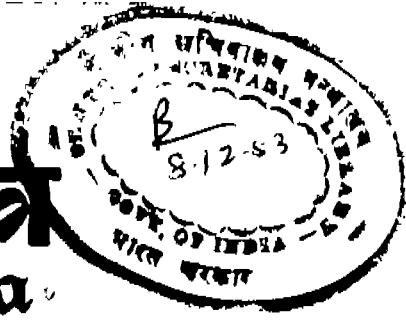
3. The delegation of legislative power is thus normal in character.

SUDARSHAN AGARWAL,
Secretary-General.



भारत का राजपत्र

The Gazette of India



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इस भाग में भिन्न पृष्ठ संख्या वाले जाती हैं जिससे कि यह अलग संकलन

के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed
as a separate compilation

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
(Legislative Department)

New Delhi, the 1st September, 1983/Bhadra 10, 1905 (Saka)

The following Act of Parliament received the assent of the President on the 31st August, 1983, and is hereby published for general information:—

THE COPYRIGHT (AMENDMENT) ACT, 1983
No. 23 of 1983

[31st August, 1983.]

An Act to amend the Copyright Act, 1957.

Be it enacted by Parliament in the Thirty-fourth Year of the Republic of India as follows:—

1. (1) This Act may be called the Copyright (Amendment) Act 1983.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Short title and commencement.

Substitution of expression "radio-diffusion" by expression "broadcast".

Amendment of section 2

14 of 1957.

2. Throughout the Copyright Act, 1957 (hereinafter referred to as the principal Act), unless otherwise expressly provided, for the word "radiodiffusion", wherever it occurs, the word "broadcast" shall be substituted.

3. In section 2 of the principal Act,—

(a) after clause (d), the following clause shall be inserted, namely:—

'(dd) "broadcast" means communication to the public—

(i) by any means of wireless diffusion, whether in any one or more of the forms of signs, sounds or visual images; or

(ii) by wire,

and includes a re-broadcast';

(b) after clause (f), the following clause shall be inserted, namely:—

'(ff) "communication to the public" means communication to the public in whatever manner, including communication through satellite,';

(c) for clause (l), the following clause shall be substituted, namely:—

'(l) "Indian work" means a literary, dramatic or musical work,—

(i) the author of which is a citizen of India; or

(ii) which is first published in India; or

(iii) the author of which, in the case of an unpublished work, is, at the time of the making of the work, a citizen of India,';

(d) clause (v) shall be omitted.

**Amend-
ment of
section 3.**

4 In section 3 of the principal Act, in clause (a), for the words "work to the public in sufficient quantities", the words "work, either in whole or in part, to the public in a manner sufficient to satisfy the reasonable requirements of the public having regard to the nature of the work" shall be substituted.

**Amend-
ment of
section 6.**

5. In section 6 of the principal Act, for clause (a), the following clause shall be substituted, namely:—

"(a) whether for the purposes of section 3, copies of any,—

(i) literary, dramatic, musical or artistic work are issued to the public in a manner sufficient to satisfy the reasonable requirements of the public; or

(ii) records are issued to the public in sufficient quantities; or".

**Amend-
ment of
section
12.**

6. In section 12 of the principal Act, in sub-section (7), for the words and figures "sections 480 and 482 of the Code of Criminal Procedure, 1898", the words and figures "sections 345 and 346 of the Code of Criminal Procedure, 1973" shall be substituted.

5 of 1898.

2 of 1974.

**Amend-
ment of
section
15.**

7. In section 15 of the principal Act, the words "Indian Patents and", at both the places where they occur, shall be omitted.

**Amend-
ment of
section
17.**

8. In section 17 of the principal Act.—

(a) after clause (c), the following clause shall be inserted, namely:—

"(cc) in the case of any address or speech delivered in public, the person who has delivered such address or speech or if such person has delivered such address or speech on behalf

of any other person, such other person shall be the first owner of the copyright therein notwithstanding that the person who delivers such address or speech, or, as the case may be, the person on whose behalf such address or speech is delivered, is employed by any other person who arranges such address or speech or on whose behalf or premises such address or speech is delivered;";

(b) after clause (d), the following clause and *Explanation* shall be inserted, namely:—

'(dd) in the case of a work made or first published by or under the direction or control of any public undertaking, such public undertaking shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein.

Explanation.—For the purposes of this clause and section 28A, "public undertaking" means—

(i) an undertaking owned or controlled by Government;
or

(ii) a Government Company as defined in section 617
of the Companies Act, 1956; or

(iii) a body corporate established by or under any Central, Provincial or State Act.'

1 of 1956.

9. Section 19 of the principal Act shall be re-numbered as sub-section (1) thereof and after sub-section (1) as so re-numbered, the following sub-section shall be inserted, namely:—

"(2) The assignment of the copyright in any work shall, among other things, indicate clearly the rights proposed to be assigned and the size of the work.".

10. After section 19 of the principal Act, the following section shall be inserted, namely:—

Amendment of
section
19.

Insertion of
new
section
19A.

Disputes
with res-
pect to
assign-
ment of
copyright.

"19A. Where any dispute arises with respect to the assignment of, or any of the terms of the assignment of, any copyright, the Copyright Board may, on receipt of a complaint from any of the parties to the dispute and after holding such inquiry as it may deem necessary, pass such orders as it may deem fit, including orders by way of giving permission to the owner of the copyright to revoke its assignment if the terms of the assignment are harsh to him or if the publisher unduly delays the publication of the work or by way of issue of a certificate for the recovery of any royalty due to the owner.".

11. After section 28 of the principal Act, the following section shall be inserted, namely:—

Insertion
of new
section
28A.

Term of
copy-
right in
works of
public
under-
takings.

"28A. In the case of a work, where a public undertaking is the first owner of the copyright therin, copyright shall subsist until fifty years from the beginning of the calendar year next following the year in which the work is first published.".

Insertion
of new
section
31A.

Compul-
sory
licence in
unpub-
lished
Indian
works.

12. After section 31 of the principal Act, the following section shall be inserted, namely:—

“31A. (1) Where, in the case of an Indian work referred to in sub-clause (iii) of clause (l) of section 2, the author is dead or unknown or cannot be traced, or the owner of the copyright in such work cannot be found, any person may apply to the Copyright Board for a licence to publish such work or a translation thereof in any language.

(2) Before making an application under sub-section (1), the applicant shall publish his proposal in one issue of a daily newspaper in the English language having circulation in the major part of the country and where the application is for the publication of a translation in any language, also in one issue of any daily newspaper in that language.

(3) Every such application shall be made in such form as may be prescribed and shall be accompanied with a copy of the advertisement issued under sub-section (2) and such fee as may be prescribed.

(4) Where an application is made to the Copyright Board under this section, it may, after holding such inquiry as may be prescribed, direct the Registrar of Copyrights to grant to the applicant a licence to publish the work or a translation thereof in the language mentioned in the application subject to the payment of such royalty and subject to such other terms and conditions as the Copyright Board may determine, and thereupon the Registrar of Copyrights shall grant the licence to the applicant in accordance with the direction of the Copyright Board.

(5) Where a licence is granted under this section, the Registrar of Copyrights may, by order, direct the applicant to deposit the amount of the royalty determined by the Copyright Board in the public account of India or in any other account specified by the Copyright Board so as to enable the owner of the copyright or, as the case may be, his heirs, executors or the legal representatives to claim such royalty at any time.

(6) Without prejudice to the foregoing provisions of this section, in the case of a work referred to in sub-section (1), if the original author is dead, the Central Government may, if it considers that the publication of the work is desirable in the national interest, require the heirs, executors or legal representatives of the author to publish such work within such period as may be specified by it.

(7) Where any work is not published within the period specified by the Central Government under sub-section (6), the Copyright Board may, on an application made by any person for permission to publish the work and after hearing the parties concerned, permit such publication on payment of such royalty as the Copyright Board may, in the circumstances of such case, determine in the prescribed manner.”.

13. In section 32 of the principal Act,—

Amend-
ment of
section
32.

(a) in sub-section (1), after the words "in any language", the words "after a period of seven years from the first publication of the work" shall be inserted;

(b) after sub-section (1), the following sub-section shall be inserted, namely:—

"(1A) Notwithstanding anything contained in sub-section (1), any person may apply to the Copyright Board for a licence to produce and publish a translation, in printed or analogous forms of reproduction, of a literary or dramatic work, other than an Indian work, in any language in general use in India after a period of three years from the first publication of such work, if such translation is required for the purposes of teaching, scholarship or research:

Provided that where such translation is in a language not in general use in any developed country, such application may be made after a period of one year from such publication.";

(c) in sub-section (2), for the words "such application", the words "application under this section" shall be substituted;

(d) in sub-section (4),—

(i) in the opening paragraph, for the portion beginning with the words "the application, on condition that the applicant" and ending with the words "in the prescribed manner:", the following shall be substituted, namely:—

"the application—

(i) subject to the condition that the applicant shall pay to the owner of the copyright in the work royalties in respect of copies of the translation of the work sold to the public, calculated at such rate as the Copyright Board may, in the circumstances of each case, determine in the prescribed manner; and

(ii) where such licence is granted on an application under sub-section (1A), subject also to the condition that the licence shall not extend to the export of copies of the translation of the work outside India and every copy of such translation shall contain a notice in the language of such translation that the copy is available for distribution only in India:

Provided that nothing in clause (ii) shall apply to the export by Government or any authority under the Government of copies of such translation in a language other than English, French or Spanish to any country if—

(1) such copies are sent to citizens of India residing outside India or to any association of such citizens outside India; or

(2) such copies are meant to be used for purposes of teaching, scholarship or research and not for any commercial purpose; and

(3) in either case, the permission for such export has been given by the Government of that country:";

(ii) in the proviso,—

(1) for the words "Provided that no such licence", the words "Provided further that no licence under this section" shall be substituted;

(2) in clause (a), for the words "within seven years of the first publication of the work", the words "within seven years or three years or one year, as the case may be, of the first publication of the work" shall be substituted;

(3) in clause (b), for the words "he was unable to find", the words "he was, after due diligence on his part, unable to find" shall be substituted;

(4) in clause (c),—

(A) for the words "such authorisation to the publisher whose name appears from the work", the words, brackets and figure "such authorisation by registered air mail post to the publisher whose name appears from the work, and in the case of an application for a licence under sub-section (I)" shall be substituted;

(B) for the words "the application for the licence", the words "such application" shall be substituted;

(5) after clause (c), the following clauses shall be inserted, namely:—

"(cc) a period of six months in the case of an application under sub-section (IA) (not being an application under the proviso thereto), or nine months in the case of an application under the proviso to that sub-section, has elapsed from the date of making the request under clause (b) of this proviso, or where a copy of the request has been sent under clause (c) of this proviso, from the date of sending of such copy, and the translation of the work in the language mentioned in the application has not been published by the owner of the copyright in the work or any person authorised by him within the said period of six months or nine months, as the case may be;

(ccc) in the case of any application made under sub-section (IA),—

(i) the name of the author and the title of the particular edition of the work proposed to be translated are printed on all the copies of the translation;

(ii) if the work is composed mainly of illustrations, the provisions of section 32A are also complied with;";

(e) after sub-section (4), the following sub-sections and *Explanation* shall be inserted, namely:—

'(5) Any broadcasting authority may apply to the Copyright Board for a licence to produce and publish the translation of—

(a) a work referred to in sub-section (1A) and published in printed or analogous forms of reproduction; or

(b) any text incorporated in audio-visual fixations prepared and published solely for the purpose of systematic instructional activities,

for broadcasting such translation for the purposes of teaching or for the dissemination of the results of specialised, technical or scientific research to the experts in any particular field.

(6) The provisions of sub-sections (2) to (4) in so far as they are relatable to an application under sub-section (1A), shall, with the necessary modifications, apply to the grant of a licence under sub-section (5) and such licence shall not also be granted unless—

(a) the translation is made from a work lawfully acquired;

(b) the broadcast is made through the medium of sound and visual recordings;

(c) such recording has been lawfully and exclusively made for the purpose of broadcasting in India by the applicant or by any other broadcasting agency; and

(d) the translation and the broadcasting of such translation are not used for any commercial purposes.

Explanation.—For the purposes of this section,—

(a) "developed country" means a country which is not a developing country;

(b) "developing country" means a country which is for the time being regarded as such in conformity with the practice of the General Assembly of the United Nations;

(c) "purposes of research" does not include purposes of industrial research, or purposes of research by bodies corporate (not being bodies corporate owned or controlled by Government) or other associations or body of persons for commercial purposes;

(d) "purposes of teaching, research or scholarship" includes—

(i) purposes of instructional activity at all levels in educational institutions, including Schools, Colleges, Universities and tutorial institutions; and

(ii) purposes of all other types of organised educational activity.'

14. In Chapter VI of the principal Act, after section 32, the following sections shall be inserted, namely:—

Inser-
tion of
new sec-
tions 32A
and 32B.

Licence
to repro-
duce and
publish
works for
certain
purposes.

'32A. (1) Where, after the expiration of the relevant period from the date of the first publication of an edition of a literary, scientific or artistic work,—

(a) the copies of such edition are not made available in India; or

(b) such copies have not been put on sale in India for a period of six months,

to the general public, or in connection with systematic instructional activities at a price reasonably related to that normally charged in India for comparable works by the owner of the right of reproduction or by any person authorised by him in this behalf, any person may apply to the Copyright Board for a licence to reproduce and publish such work in printed or analogous forms of reproduction at the price at which such edition is sold or at a lower price for the purposes of systematic instructional activities.

(2) Every such application shall be made in such form as may be prescribed and shall state the proposed retail price of a copy of the work to be reproduced.

(3) Every applicant for a licence under this section shall, along with his application, deposit with the Registrar of Copyrights such fee as may be prescribed.

(4) Where an application is made to the Copyright Board under this section, it may, after holding such inquiry as may be prescribed, grant to the applicant a licence, not being an exclusive licence, to produce and publish a reproduction of the work mentioned in the application subject to the conditions that,—

(i) the applicant shall pay to the owner of the copyright in the work royalties in respect of copies of the reproduction of the work sold to the public, calculated at such rate as the Copyright Board may, in the circumstances of each case, determine in the prescribed manner;

(ii) a licence granted under this section shall not extend to the export of copies of the reproduction of the work outside India and every copy of such reproduction shall contain a notice that the copy is available for distribution only in India:

Provided that no such licence shall be granted unless—

(a) the applicant has proved to the satisfaction of the Copyright Board that he had requested and had been denied authorisation by the owner of the copyright in the work to reproduce and publish such work or that he was, after due diligence on his part, unable to find such owner;

(b) where the applicant was unable to find the owner of the copyright, he had sent a copy of his request for such authorisation by registered air-mail post to the publisher whose name appears from the work not less than three months before the application for the licence;

(c) the Copyright Board is satisfied that the applicant is competent to reproduce and publish an accurate reproduction of the work and possesses the means to pay to the owner of the copyright the royalties payable to him under this section;

(d) the applicant undertakes to reproduce and publish the work at such price as may be fixed by the Copyright Board, being a price reasonably related to the price normally charged in India for works of the same standard on the same or similar subjects;

(e) a period of six months in the case of an application for the reproduction and publication of any work of natural science, physical science, mathematics or technology, or a period of three months in the case of an application for the reproduction and publication of any other work, has elapsed from the date of making the request under clause (a), or where a copy of the request has been sent under clause (b), from the date of sending of a copy, and a reproduction of the work has not been published by the owner of the copyright in the work or any person authorised by him within the said period of six months or three months, as the case may be;

(f) the name of the author and the title of the particular edition of the work proposed to be reproduced are printed on all the copies of the reproduction;

(g) the author has not withdrawn from circulation copies of the work; and

(h) an opportunity of being heard is given, wherever practicable, to the owner of the copyright in the work.

(5) No licence to reproduce and publish the translation of a work shall be granted under this section unless such translation has been published by the owner of the right of translation or any person authorised by him and the translation is not in a language in general use in India.

(6) The provisions of this section shall also apply to the reproduction and publication, or translation into a language in general use in India, of any text incorporated in audio-visual fixations prepared and published solely for the purpose of systematic instructional activities.

Explanation.—For the purposes of this section, “relevant period”, in relation to any work, means a period of—

(a) seven years from the date of the first publication of that work, where the application is for the reproduction and publication of any work of, or relating to fiction, poetry, drama, music or art;

(b) three years from the date of the first publication of that work, where the application is for the reproduction and publication of any work of, or relating to, natural science, physical science, mathematics or technology; and

(c) five years from the date of the first publication of that work, in any other case.

Termination of licences issued under this Chapter.

32B. (1) If, at any time after the granting of a licence to produce and publish the translation of a work in any language under sub-section (IA) of section 32 (hereafter in this sub-section referred to as the licensed work), the owner of the copyright in the work or any person authorised by him publishes a translation of such work in the same language and which is substantially the same in content at a price reasonably related to the price normally charged in India for the translation of works of the same standard on the same or similar subject, the licence so granted shall be terminated:

Provided that no such termination shall take effect until after the expiry of a period of three months from the date of service of a notice in the prescribed manner on the person holding such licence by the owner of the right of translation intimating the publication of the translation as aforesaid:

Provided further that copies of the licensed work produced and published by the person holding such licence before the termination of the licence takes effect may continue to be sold or distributed until the copies already produced and published are exhausted.

(2) If, at any time after the granting of a licence to produce and publish the reproduction or translation of any work under section 32A, the owner of the right of reproduction or any person authorised by him sells or distributes copies of such work or a translation thereof, as the case may be, in the same language and which is substantially the same in content at a price reasonably related to the price normally charged in India for works of the same standard on the same or similar subject, the licence so granted shall be terminated :

Provided that no such termination shall take effect until after the expiry of a period of three months from the date of service of a notice in the prescribed manner on the person holding the licence by the owner of the right of reproduction intimating the sale or distribution of the copies of the editions of work as aforesaid:

Provided further that any copies already reproduced by the licensee before such termination takes effect may continue to be sold or distributed until the copies already produced are exhausted .

15. In sub-section (1) of section 37 of the principal Act, the words "by radio-diffusion" shall be omitted.

Amend-
ment of
section
37.

16. In section 45 of the principal Act, to sub-section (1), the following proviso shall be added, namely:—

Amend-
ment of
section
45.

43 of 1958.

"Provided that in respect of an artistic work which is used or is capable of being used in relation to any goods, the application shall include a statement to that effect and shall be accompanied by a certificate from the Registrar of Trade Marks referred to in section 4 of the Trade and Merchandise Marks Act, 1958, to the effect that no trade mark identical with or deceptively similar to such artistic work has been registered under that Act in the name of, or that no application has been made under that Act for such registration by, any person other than the applicant."

17. In Chapter X of the principal Act, after section 50, the following section shall be inserted, namely:—

Insertion
of new
section
50A.

"50A. Every entry made in the Register of Copyrights or the particulars of any work entered under section 45, the correction of every entry made in such register under section 49, and every rectification ordered under section 50, shall be published by the Registrar of Copyrights in the Official Gazette or in such other manner as he may deem fit."

Entries
in the
Register
of Copy-
rights,
etc., to
be publi-
shed.

18. In sub-section (1) of section 52 of the principal Act, in clause (b), the following *Explanation* shall be inserted at the end, namely:—

Amend-
ment of
section
52.

Explanation.—The publication of a compilation of addresses or speeches delivered in public is not a fair dealing of such work within the meaning of this clause.

8 of 1878.
51 of 1962.

19. In sub-section (3) of section 53 of the principal Act, for the words and figures "under section 19 of the Sea Customs Act, 1878", the words and figures "under section 11 of the Customs Act, 1962", shall be substituted.

Amend-
ment of
section
53.

1 of 1877.
47 of 1963.

20. In section 59 of the principal Act, in sub-section (1), for the words and figures "the Specific Relief Act, 1877", the words and figures "the Specific Relief Act, 1963" shall be substituted.

Amend-
ment of
section
59.

1 of 1877.
47 of 1963.

21. In section 60 of the principal Act, for the words and figures "in section 42 of the Specific Relief Act, 1877", the words and figures "in section 34 of the Specific Relief Act, 1963", shall be substituted.

Amend-
ment of
section
60.

22. In section 70 of the principal Act, for the words "a presidency magistrate or a magistrate of the first class", the words "a Metropolitan Magistrate or Judicial Magistrate of the first class", shall be substituted.

Amend-
ment of
section
70.

Amend-
ment of
section
78.

23. In section 78 of the principal Act, for sub-section (3), the following^g sub-section shall be substituted, namely:—

“(3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, ‘he rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.”.

R. V. S. PERI SASTRI,
Secy. to the Govt. of India.



भारत का राजपत्र

The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 2

PART II—Section 2

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इस भाग में भिन्न पृष्ठ संख्या वाली हुई जिससे कि यह अलग संकलन
 के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed
 as a separate compilation

RAJYA SABHA

The following Bill was introduced in the Rajya Sabha on the 16th August, 1984:—

BILL NO. XIX OF 1984

A Bill further to amend the Copyright Act, 1957.

Be it enacted by Parliament in the Thirty-fifth Year of the Republic of India as follows:—

1. (1) This Act may be called the Copyright (Amendment) Act, 1984.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Short title
and
commencement.

14 of 1957. **2.** In section 2 of the Copyright Act, 1957 (hereinafter referred to as the principal Act),—

Amend-
ment of
section 2.

(a) in clause (f), the following *Explanation* shall be inserted at the end, namely:—

'Explanation.—For the purposes of this clause, "video films" shall also be deemed to be work produced by a process analogous to cinematography;'

(b) after clause (h), the following clause shall be inserted namely:—

“(hh) “duplicating equipment” means any mechanical contrivance or device used or intended to be used for making copies of any work;’;

(c) in clause (o), for the words “and compilations”, the words “, compilations and computer programmes, that is to say, programmes recorded on any disc, tape, perforated media or other information storage device, which, if fed into or located in a computer or computer based equipment is capable of reproducing any information” shall be substituted;

(d) in clause (t), after the word “negative”, the words “, duplicating equipment” shall be inserted.

3. In section 51 of the principal Act, in clause (b),—

Amend-
ment of
section 51.

(a) in sub-clause (iv), the brackets and words “(except for the private and domestic use of the importer)” shall be omitted;

(b) the following proviso shall be inserted at the end, namely:—

“Provided that nothing in sub-clause (iv) shall apply to the import of two copies of any work, other than a cinematograph film or record, for the private and domestic use of the importer.”.

4. After section 52 of the principal Act, the following section shall be inserted, namely:—

Insertion
of new
section
52A.

Particulars
to be
included in
records
and video
films.

“52A. (1) No person shall publish a record in respect of any work unless the following particulars are displayed on the record and on any container thereof, namely:—

(a) the name and address of the person who has made the record;

(b) the name and address of the owner of the copyright in such work; and

(c) the year of its first publication.

(2) No person shall publish a video film in respect of any work unless the following particulars are displayed in the video film, when exhibited, and on the video cassette or other container thereof, namely:—

(a) if such work is a cinematograph film required to be certified for exhibition under the provisions of the Cinematograph Act, 1952, a copy of the certificate granted by the Board of Film Certification under section 5A of that Act in respect of such work;

(b) the name and address of the person who has made the video film and a declaration by him that he has obtained the necessary licence or consent from the owner of the copyright in such work for making such video film; and

(c) the name and address of the owner of the copyright in such work.”.

5. In section 63 of the principal Act, for the words “shall be punishable with imprisonment which may extend to one year, or with fine, or with both”, the following shall be substituted, namely:—

“shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees”.

6. After section 63 of the principal Act, the following section shall be inserted, namely:—

“63A. Whoever having already been convicted of an offence under section 63 is again convicted of any such offence shall be punishable for the second and for every subsequent offence, with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than one year or a fine of less than one lakh rupees:

Provided further that for the purposes of this section, no cognizance shall be taken of any conviction made before the commencement of the Copyright (Amendment) Act, 1984.”.

7. In section 64 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Any police officer, not below the rank of a sub-inspector, may, if he is satisfied that an offence under section 63 in respect of the infringement of copyright in any work has been, is being, or is likely to be, committed, seize without warrant, all copies of the work, and all plates used for the purpose of making infringing copies of the work, wherever found, and all copies and plates so seized shall, as soon as practicable, be produced before a Magistrate.”;

(b) in sub-section (2),—

(i) after the words “copies of a work”, the words “, or plates.” shall be inserted;

(ii) after the words “such copies”, the words “or plates” shall be inserted.

8. In section 65 of the principal Act, for the words “one year, or with fine, or with both”, the words “two years and shall also be liable to fine” shall be substituted.

Amend-
ment of
section 63.

Insertion of
new section
63A.

Enhanced
penalty on
second and
subsequent
convictions.

Amend-
ment of
section
64.

Amend-
ment of
section
65.

Insertion
of new
section
68A.

Penalty
for
contraven-
tion of
section
52A.

Amend-
ment of
Act 12 of
1974.

9. After section 68 of the principal Act, the following section shall be inserted, namely:—

“68A. Any person who publishes a record or a video film in contravention of the provisions of section 52A shall be punishable with imprisonment which may extend to three years and shall also be liable to fine.”.

10. In the Economic Offences (Inapplicability of Limitation) Act, 1974,—

(a) in section 2, in clause (i), after the word “enactments”, the words “or provisions, if any, thereof” shall be inserted;

(b) in the Schedule, after entry 1 relating to the Indian Income-tax Act, 1922, the following entry shall be inserted, namely:—

11 of 1922.

“1A. Clause (a) of section 63 of the Copyright Act, 1957 (14 of 1957).”.

STATEMENT OF OBJECTS AND REASONS

Piracy has become a global problem due to the rapid advances in technology. It has assumed alarming proportions all over the world and all the countries are trying to meet the challenge by taking stringent legislative and enforcement measures. The problem of piracy and the necessity for taking sufficient anti-piracy measures were also voiced by members of Parliament at the time of the consideration of the Bill to amend the Copyright Act, 1957, last year.

2. Mainly there are three types of piracy, namely, piracy of the printed word, piracy of sound recordings and piracy of cinematograph films. The object of the pirate in all such cases is to make quick money and avoid payment of legitimate taxes and royalties. In respect of books, it is estimated that four hundred to five hundred titles are pirated every year in India and on each of the pirated titles, the loss to the Government in the form of tax evasion amounts approximately to Rs. 11,000/- . Apart from books, recorded music and video cassettes of films and T.V. programmes are reproduced, distributed and sold on a massive scale in many parts of the world without any remuneration to the authors, artistes, publishers and producers concerned. The emergence of new techniques of recordings, fixation and reproduction of audio programmes, combined with the advent of video technology have greatly helped the pirates. It is estimated that the losses to the film producers and other owners of copyright amount to several crores of rupees. The loss to Government in terms of tax evasion also amounts to crores of rupees. In addition, because of the recent video boom in the country, there are reports that uncertified video films are being exhibited on a large scale. A large number of video parlours have also sprung up all over the country and they exhibit such films recorded on video tapes by charging admission fees from their clients. In view of these circumstances, it is proposed to amend the Copyright Act, 1957, suitably to combat effectively the piracy that is prevalent in the country.

3. The Bill provides, among other things, for the following amendments to the Act, namely:—

(i) to increase the punishment provided for the infringement of the copyright, namely, imprisonment of three years, with a minimum punishment of imprisonment of six months, and a fine up to Rs. 2 lakhs, with a minimum of Rs. 50,000/- .

(ii) to provide for enhanced punishments in the case of second and subsequent convictions;

(iii) to provide for the declaration of the offence of infringement of copyright as an economic offence so that the period of limitation provided for in the Code of Criminal Procedure, 1973, for offences will not be applicable to this offence;

(iv) to specifically make the provisions of the Act applicable to video films and computer programmes;

(v) to require the producers of records and video films to display certain information in the record, video films and containers thereof.

3. The Bill seeks to achieve the above objects.

NEW DELHI;

The 8th August, 1984.

SHEILA KAUL.

SUDARSHAN AGARWAL,
Secretary-General.

Act...19... 68, 5.2. 204.7

THE COPYRIGHT (AMENDMENT) ACT, 1984

No. 65 OF 1984

[14th September, 1984.]

An Act further to amend the Copyright Act, 1957.

Be it enacted by Parliament in the Thirty-fifth Year of the Republic of India as follows:—

1. (1) This Act may be called the Copyright (Amendment) Act, 1984.

Short title
and
commencement.

(2) It shall come into force on such date¹ as the Central Government may, by notification in the Official Gazette, appoint.

2. In section 2 of the Copyright Act, 1957 (hereinafter referred to as the principal Act),—

Amend-
ment of
section 2

(a) in clause (f), the following *Explanation* shall be inserted at the end, namely:—

'Explanation.—For the purposes of this clause, "video films" shall also be deemed to be work produced by a process analogous to cinematography';

(b) after clause (h), the following clause shall be inserted, namely:—

"(hh) "duplicating equipment" means any mechanical contrivance or device used or intended to be used for making copies of any work";

(c) in clause (o), for the words "and compilations", the words "compilations and computer programmes, that is to say, programmes recorded on any disc, tape, perforated media or other information storage device, which, if fed into or located in a computer or computer based equipment, is capable of reproducing any information" shall be substituted;

(d) in clause (t), after the word "negative", the words "duplicating equipment" shall be inserted.

¹ 8th October 1984, *vide* Notification No. G.S.R. 712 (E), dated 8-10-1984, Gazette of India, Extraordinary, 1984, Part II, Section 3 (i).

Amend-
ment of
section 51.

3. In section 51 of the principal Act, in clause (b),—

(a) in sub-clause (iv), the brackets and words “(except for the private and domestic use of the importer)” shall be omitted;

(b) the following proviso shall be inserted at the end, namely:—

“Provided that nothing in sub-clause (iv) shall apply to the import of two copies of any work, other than a cinematograph film or record, for the private and domestic use of the importer.”.

Insertion
of new
section
52A.

4. After section 52 of the principal Act, the following section shall be inserted, namely:—

Particulars
to be
included in
records
and video
films.

“52A. (1) No person shall publish a record in respect of any work unless the following particulars are displayed on the record and on any container thereof, namely:—

(a) the name and address of the person who has made the record;

(b) the name and address of the owner of the copyright in such work; and

(c) the year of its first publication.

(2) No person shall publish a video film in respect of any work unless the following particulars are displayed in the video film, when exhibited, and on the video cassette or other container thereof, namely:—

(a) if such work is a cinematograph film required to be certified for exhibition under the provisions of the Cinematograph Act, 1952, a copy of the certificate granted by the Board of Film Certification under section 5A of that Act in respect of such work;

(b) the name and address of the person who has made the video film and a declaration by him that he has obtained the necessary licence or consent from the owner of the copyright in such work for making such video film; and

(c) the name and address of the owner of the copyright in such work.”.

Amend-
ment of
section 63.

5. In section 63 of the principal Act, for the words “shall be punishable with imprisonment which may extend to one year, or with fine, or with both”, the following shall be substituted, namely:—

“shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and

with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees".

6. After section 63 of the principal Act, the following section shall be inserted, namely:—

"63A. Whoever having already been convicted of an offence under section 63 is again convicted of any such offence shall be punishable for the second and for every subsequent offence, with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than one year or a fine of less than one lakh rupees:

Provided further that for the purposes of this section, no cognizance shall be taken of any conviction made before the commencement of the Copyright (Amendment) Act, 1984."

7. In section 64 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) Any police officer, not below the rank of a sub-inspector, may, if he is satisfied that an offence under section 63 in respect of the infringement of copyright in any work has been, is being, or is likely to be, committed, seize without warrant, all copies of the work, and all plates used for the purpose of making infringing copies of the work, wherever found, and all copies and plates so seized shall, as soon as practicable, be produced before a Magistrate.";

(b) in sub-section (2),—

(i) after the words "copies of a work", the words ", or plates," shall be inserted;

(ii) after the words "such copies", the words "or plates" shall be inserted.

8. In section 65 of the principal Act, for the words "one year, or with fine, or with both", the words "two years and shall also be liable to fine" shall be substituted,

Insertion of new section 63A.

Enhanced penalty on second and subsequent convictions.

Amend-
ment of
section 64.

Amend-
ment of
section
65.

Insertion
of new
section
68A.

Penalty
for
contraven-
tion of
section
52A.

Amend-
ment of
Act 12 of
1974.

9. After section 68 of the principal Act, the following section shall be inserted, namely:—

"68A. Any person who publishes a record or a video film in contravention of the provisions of section 52A shall be punishable with imprisonment which may extend to three years and shall also be liable to fine."

10. In the Economic Offences (Inapplicability of Limitation) Act, 1974,—

(a) in section 2, in clause (i), after the word "enactments", the words "or provisions, if any, thereof" shall be inserted;

(b) in the Schedule, after entry 1 relating to the Indian Income-tax Act, 1922, the following entry shall be inserted, namely:—

"1A. Clause. (a) of section 63 of the Copyright Act, 1957 (14 of 1957)."

11 of 1922.



भारत का राजपत्र

The Gazette of India

12/13/92
12/13/92

अधिकारण

EXTRAORDINARY

भाग II—खण्ड 1

PART II—Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं. 76] नई दिल्ली, शनिवार, दिसम्बर, 28, 1991/पौष 7, 1913
No. 76] NEW DELHI, SATURDAY, DECEMBER 28, 1991/PAUSA 7, 1913

इस भाग में अलग संख्या दी जाती है कि जिससे यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed
as a separate compilation.

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 28th December, 1991/Pausa 7, 1913 (Saka)

THE COPYRIGHT (AMENDMENT) ORDINANCE, 1991

No. 9 OF 1991

Promulgated by the President in the Forty-second Year of the
Republic of India.

An Ordinance further to amend the Copyright Act, 1957.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. (1) This Ordinance may be called the Copyright (Amendment) Ordinance, 1991.

(2) It shall come into force at once.

Short title and commencement.

Amendment of Chapter V.

Copyright
not to
subsist
if term
has ex-
pired.

3. For the removal of doubts, it is hereby declared that copyright shall not subsist by virtue of this Ordinance in any work in which copyright did not subsist immediately before the commencement of this Ordinance.

R. VENKATARAMAN,
President.

— — — — —
K. L. MOHANPURIA.
Additional Secretary to the Govt. of India.



आरत का राजपत्र

The Gazette of India

प्रसाधारण
EXTRAORDINARY

भाग II—खण्ड 2
PART II—Section 2

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं० ५] नई विल्हेमी, शुक्रवार, फरवरी २८, १९९२/फाल्गुन ९, १९१३
No. 5] NEW DELHI, FRIDAY, FEBRUARY 28, 1992/AHALGUNA 9, 1913

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह घलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed
as a separate compilation.

LOK SABHA

The following Bills were introduced in Lok Sabha on 28th February, 1992:—

BILL NO. 35 OF 1992

A Bill further to amend the Copyright Act, 1957.

Be it enacted by Parliament in the Forty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Copyright (Amendment) Act, 1992.

Short title
and com-
mence-
ment.

(2) It shall be deemed to have come into force on the 28th day of 5 December, 1991.

Amend-
ment of
Chapter
V.

14 of 1957.

2. In Chapter V of the Copyright Act, 1957 (hereinafter referred to as the principal Act), for the words "fifty years" wherever they occur, the words "sixty years" shall be substituted.

Copyright
not to
subsist
if term
has ex-
pired.

3. For the removal of doubts, it is hereby declared that copyright shall not subsist by virtue of this Act in any work in which copyright did not subsist immediately before the commencement of this Act.

Repeal
and saving.

Ord. 9 of
1991.

4. (1) The Copyright (Amendment) Ordinance, 1991 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act, as amended by this Act.

STATEMENT OF OBJECTS AND REASONS

The term of copyright under the Copyright Act, 1957 is up to the end of the calendar year in which fifty years are completed. This term starts from the year in which the author dies in the case of literary, dramatic, musical and artistic works (other than photographs) published within the life-time of the author, but starts from the year of publication in most other cases.

2. Gurudev Rabindranath Tagore died in the year 1941 and copyright in his published works, which stood vested in Visva Bharati, was to expire on 31st December, 1991. There had been numerous demands for according extended protection to his works in view of their national importance. While it was not considered feasible and appropriate to extend the term of copyright in respect of one author alone, the Government reviewed the whole question of what should be the appropriate term of copyright and decided to extend the term of copyright generally in all works protected by the Copyright Act, 1957 from fifty to sixty years. This was, however, not to apply to works which had already entered the public domain before 31st December, 1991.

3. The Copyright (Amendment) Ordinance, 1991 was, therefore, promulgated by the President on 28th December, 1991.

4. The Bill seeks to replace the said Ordinance and to achieve the aforesaid objects.

NEW DELHI;

ARJUN SINGH.

The 21st February, 1992.

THE COPYRIGHT (AMENDMENT) ACT, 1992

No. 13 OF 1992

[3rd April, 1992.]

An Act further to amend the Copyright Act, 1957.

BE it enacted by Parliament in the Forty-third Year of the Republic of India as follows:—

Short title
and commencement.

Amendment of Chapter V.

Copyright not to subsist if term has expired.

Repeal and saving.

1. (1) This Act may be called the Copyright (Amendment) Act, 1993.

(2) It shall be deemed to have come into force on the 28th day of December, 1991.

2. In Chapter V of the Copyright Act, 1957 (hereinafter referred to as the principal Act), for the words "fifty years", wherever they occur, the words "sixty years" shall be substituted.

3. For the removal of doubts, it is hereby declared that copyright shall not subsist by virtue of this Act in any work in which copyright did not subsist immediately before the commencement of this Act.

14 of 1957.

4. (1) The Copyright (Amendment) Ordinance, 1991 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act, as amended by this Act.

Ord. 9 of 1991.



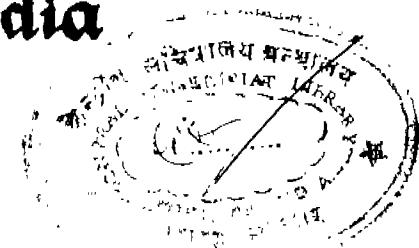
भारत का राजपत्र

The Gazette of India

असाधारण
EXTRAORDINARY

भाग II—खण्ड 2
PART II—Section 2

प्रधिकार से प्रकाशित
PUBLISHED BY AUTHORITY



सं. 41] नई बिल्ली, महात्मा गांधी, जूलाई 16, 1992/आषाढ़ 25, 1914
No. 41] NEW DELHI, THURSDAY, JULY 16, 1992/ASADHA 25, 1914

इस भाग में विप्र पृष्ठ संलग्न हो जाती है जिससे कि यह घरगुच्छ संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed
as a separate compilation

LOK SABHA

The following Bills were introduced in Lok Sabha on 16th July, 1992:—

BILL NO. 95 OF 1992

A Bill to provide for the levy and collection of a cess on copying requirement and for the transfer of the same to the owners of rights and for matters connected therewith.

Be it enacted by Parliament in the Forty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Copyright Cess Act, 1992.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires,—

(a) "copyright society" means a copyright society referred to in section 33 of the Copyright Act, 1957;

(b) "prescribed" means prescribed by rules made under this Act;

(c) "copying equipment" means any equipment referred to in section 52B of the Copyright Act, 1957 or any tapes or audio cassette or video cassette or the like recording media used with such equipment.

Short title,
extent
and
commencement,

Definitions.

Levy of
cess on
manufacturers
of copying
equipment.

3. (1) There shall be levied and collected by way of cess for the purposes of the Copyright Act, 1957, a duty of excise on copying equipment manufactured in India at such rate not exceeding ten per cent. of the ex-factory prices of the copying equipment as the Central Government may, from time to time, specify by notification in the Official Gazette.

14 of 1957.

(2) The duty of excise levied under sub-section (1) shall be in addition to the duty of excise if any, leviable on any such equipment referred to in sub-section (1) under the Central Excises and Salt Act, 1944, or any other law for the time being in force.

1 of 1944.

(3) The duty of excise levied under sub-section (1) shall be payable by the manufacturer of the copying equipment.

(4) The provisions of the Central Excises and Salt Act, 1944, and the rules made thereunder, including those relating to refunds and exemptions from duty, shall, so far as may be, apply under that Act in relation to the levy and collection of the said duty of excise as they apply in relation to the levy and collection of the duty of excise on any such equipment referred to in sub-section (1).

1 of 1944.

Levy
of
cess on
importers
of copy-
ing
equip-
ment.

4. (1) There shall be levied and collected by way of cess for the purpose of the Copyright Act, 1957, a duty of customs on all copying equipment at such rate not exceeding ten per cent. of the imported price of copying equipment, as the Central Government may, from time to time, specify by notification in the Official Gazette.

14 of 1957.

(2) The duty of customs levied under sub-section (1) shall be in addition to the duty of customs leviable on copying equipment under the Customs Act, 1962, or any other law for the time being in force.

52 of 1962.

(3) The provisions of the Customs Act, 1962, and the rules and regulations made thereunder, including those relatable to refund and exemption of duty shall, so far as may be, apply under that Act in relation to levy and collection of the said duty of customs on copying equipment under that Act.

52 of 1962.

Crediting
proceeds of
duty to the
consolidated
Fund of India.

5. The proceeds of the duty of excise levied under section 3 and the proceeds of the duty of customs levied under section 4 shall first be credited to the Consolidated Fund of India and the Central Government may, if Parliament, by appropriation made by law in this behalf, so provides, pay to the copyright society, from time to time, from out of such proceeds (after deducting the cost of collection) such sums of money as it may think fit for being utilised for the purposes of the Copyright Act, 1957.

14 of 1957.

Power to
call for in-
formation.

6. The Central Government may require any manufacturer and importer of copying equipment to furnish, for the purposes of this Act, statistical and other information in such form and within such period as may be prescribed.

7. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for the form in which and

the period within which statistical and other information may be furnished under section 6.

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

The Bill is complementary to the Copyright (Second Amendment) Bill 1992. The Copyright (Second Amendment) Bill, 1992 seeks to amend the provisions of the Copyright Act, 1957 *inter alia* to make provision for payment of remuneration to the owners of rights reproduction of works by reprographic equipment or by means of devices such as tape-recorders and video-cassette recorders, where such reproduction would not under the existing law be infringement of copyright, shall be subject to the payment of remuneration to the owner of rights by means of a levy on such equipment. This Bill seeks to provide for levy, by way of cess, of duties of excise and customs on the manufacture and import respectively of the relevant equipment in order to give effect to the aforesaid provisions of the Copyright (Second Amendment) Bill, 1992.

2. The Bill seeks to achieve the above object.

NEW DELHI;

ARJUN SINGH

The 6th May, 1992.

FINANCIAL MEMORANDUM

Clause 3 of the Bill seeks to provide for the levy, by way of a cess, of a duty of excise on copying equipment as defined under clause 2. Clause 4 seeks to provide for the levy, by way of cess, of a duty of customs on such equipment subject to the maximum rate of 10%. The actual rate of levy is to be fixed by the Central Government by notification.

2. The provisions of the Copyright Cess Bill, 1992, are to be read with clause 11 of the Copyright (Second Amendment) Bill, 1992. The necessity for levy of cess will arise only after the Central Government reaches the conclusion that the rights of the owner of right in any class of work are being administered generally throughout India by one or more copyright societies as contemplated in clause 11 of the said Bill. This will depend on the voluntary decision of the owner of right to establish copyright societies and entrust administration of their rights to them. It will not be possible at present to forecast as to when the societies will actually come into being in respect of different classes of work. It is, therefore, not possible at this stage to forecast the quantum of levy. However, on the basis of available information regarding the production of the relevant copying equipment, it is possible to estimate that after the levy is being collected on the relevant types of copying equipment, at an average rate of 5% of the value of equipment, it may be of the order of Rs. 75 crores per annum. The expenditure on the collection of the said cess would be deducted from the proceeds and would be about 4% of the proceeds as is being charged normally in respect of similar levies.

3. The Bill does not involve any other expenditure, either recurring or non-recurring.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 7 of the bill empowers the Central Government to make rules for carrying out the purposes of the proposed legislation. The matters with respect to which rules may be made have been detailed in sub-clause (2) and relate mainly to prescribing the form for furnishing statistical and other information by the manufacturers and importers of copying equipment.

2. As the matters with respect to which rules under the aforesaid clause are sought to be made are matters of procedure or detail or matters with respect to which it is not practicable to make express provision in the legislation itself, the delegation of legislative power is of normal in character.

BILL NO. 105 OF 1992

A Bill further to amend the Copyright Act, 1957.

Be it enacted by Parliament in the Forty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Copyright (Second Amendment) Act, 1992.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

14 of 1957.

2. In section 2 of the Copyright Act, 1957 (hereinafter referred to as the principal Act),—

Amend-
ment of
section 2.

(i) in clause (a),—

(a) in sub-clause (iii), the word "and", occurring at the end, shall be omitted;

(b) in sub-clause (iv), the word "and" shall be inserted at the end;

(c) after sub-clause (iv) as so amended, the following sub-clause shall be inserted, namely:—

"(v) in relation to any work, any use of such work involving its re-arrangement or alteration;";

(ii) in clause (b) and in all other provisions of the principal Act, for the words "architectural work of art", wherever they occur, the words "work of architecture" shall be substituted;

(iii) in clause (d), for sub-clauses (v) and (vi), the following sub-clauses shall be substituted, namely:—

"(v) in relation to a cinematograph film or sound recording, the producer; and

(vi) in relation to any literary, dramatic, musical or artistic work which is computer-generated, the person who causes the work to be created;";

(iv) for clause (f), the following clause shall be substituted, namely:—

(f) "cinematograph film" means any work of visual recording on any medium produced through a process from which a moving image may be produced by any means and includes a sound recording accompanying such visual recording and "cinematograph" shall be construed as including any work produced by any process analogous to cinematography including video films;";

(v) for clause (ff), the following clauses shall be substituted, namely:—

(ff) "communication to the public" means making any work available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by issuing copies of such work regardless of whether any member of the public actually sees, hears or otherwise enjoys the work so made available.

Explanation.—For the purposes of this clause, communication through satellite or cable or any other means of simultaneous communication to more than one household or place of residence including residential rooms of any hotel or hostel shall be deemed to be communication to the public;

(ffa) "composer", in relation to a musical work, means the person who composes the music regardless of whether he records it in any form of graphical notation;

(ffb) "computer" includes any electronic or similar device having information processing capabilities;

(ffc) "computer programme" means a set of instructions expressed in words, codes, schemes or in any other form, in a machine, readable medium, of causing a computer to perform a particular task or achieve a particular result;

(ffd) "copyright society" means a society registered under sub-section (3) of section 33;';

(vi) for clause (m), the following clause shall be substituted, namely:—

'(m) "infringing copy" means,—

(i) in relation to a literary, dramatic, musical or artistic work, a reproduction thereof otherwise than in the form of a cinematographic film;

(ii) in relation to a cinematographic film, a copy of the film made on any medium by any means;

(iii) in relation to a sound recording, any other recording embodying the same sound recording, made by any means;

(iv) in relation to a programme or performance in which such a broadcast reproduction right or a performer's right subsists under the provisions of this Act, the sound recording or a cinematographic film of such programme or performance,

if such reproduction, copy or sound recording is made or imported in contravention of the provisions of this Act;';

(vii) for clause (o), the following clause shall be substituted, namely:—

'(o) "literary work" includes computer programmes, tables and compilations including computer data basis;';

(viii) for clause (p), the following clause shall be substituted, namely:—

'(p) "musical work" means a work consisting of music and includes any graphical notation of such work but does not include any words or any action intended to be sung, spoken or performed with the music;';

(ix) for clause (q), the following clause shall be substituted, namely:—

'(q) "performance", in relation to performer's right, means any visual or acoustic presentation made live by one or more performers;';

(x) after clause (q), the following clause shall be inserted, namely:—

‘(qq) “performer” includes an actor, singer, musician, dancer, acrobat, jugglar, snake charmer, a person delivering a lecture or any other person who makes a performance;’;

(xi) clause (r) shall be omitted;

(xii) in clause (t) and in all other provisions of the principal Act, for the word “record”, wherever it occurs, the words “sound recording” shall be substituted;

(xiii) after clause (u), the following clause shall be inserted, namely:—

‘(uu) “producer”, in relation to a cinematograph film or sound recording, means a person who takes the initiative and responsibility for making the work;’;

(xiv) clause (w) shall be omitted;

(xv) for clause (x), the following clauses shall be substituted, namely:—

‘(x) “rephotography” means the making of copies of a work, by photo copying or similar means;

‘(xx) “sound recording” means a recording of sounds from which such sounds may be produced regardless of the medium on which such recording is made or the method by which the sounds are produced.’

Substitution of new section for section 3.

3. For section 3 of the principal Act, the following section shall be substituted, namely:—

Meaning of publication.

‘3. For the purposes of this Act, “publication” means making a work available to the public by issue of copies or by communicating the work to the public.’

Substitution of new section for section 6.

4. For section 6 of the principal Act, the following section shall be substituted, namely:—

Certain disputes to be decided by Copyright Board.

“6. If any question arises,—

(a) whether a work has been published or, as to the date on which a work was published for the purposes of Chapter V, or

(b) whether the term of copyright for any work is shorter in any other country than that provided in respect of that work under this Act,

it shall be referred to the Copyright Board constituted under section 11 whose decision thereon shall be final:

Provided that if in the opinion of the Copyright Board, the issue of copies or communication to the public referred to in section 3 was of an insignificant nature, it shall not be deemed to be publication for the purposes of that section.”.

5. In section 11 of the principal Act,—

(a) in sub-section (1), for the word "eight", the word "fourteen" shall be substituted;

(b) in sub-section (3), the words "the Supreme Court or" shall be omitted.

6. In section 12 of the principal Act,—

(a) after sub-section (2), the following proviso shall be inserted, namely:—

"Provided that, if the Chairman is of opinion that any matter of importance is required to be heard by a larger bench, he may refer the matter to a special bench consisting of five members.";

(b) in sub-section (3), for the proviso, the following proviso shall be substituted, namely:—

"Provided that where there is no such majority, the opinion of the Chairman shall prevail.";

(c) in sub-section (4), for the words "The Copyright Board", the words "The Chairman" shall be substituted.

7. For section 14 of the principal Act, the following section shall be substituted, namely:—

'14. For the purposes of this Act, "copyright" means the exclusive right, subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:—

(a) in the case of a literary, dramatic or musical work, not being a computer programme,—

(i) to reproduce the work in any material form including the storing of it in any medium by electronic means;

(ii) to issue copies of the work to the public not being copies already in circulation;

(iii) to perform the work in public, or communicate it to the public;

(iv) to make any cinematograph film or sound recording in respect of the work;

(v) to make any translation of the work;

(vi) to make any adaptation of the work;

(vii) to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi);

(b) in the case of a computer programme,—

(i) to do any of the acts specified in clause (a);

Amend-
ment of
section 11.

Amend-
ment of
section 12.

Substi-
tution of
new sec-
tion for
section
14.

Mean-
ing of
copy-
right.

(ii) to sell or give on hire, or offer for sale or hire, any copy of the computer programme, regardless of whether such copy has been sold or given on hire on earlier occasions;

(c) in the case of an artistic work,—

(i) to reproduce the work in any material form including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work;

(ii) to communicate the work to the public;

(iii) to issue copies of the work to the public not being copies already in circulation;

(iv) to include the work in any cinematograph film;

(v) to make any adaptation of the work;

(vi) to do in relation to an adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (iv);

(d) in the case of a cinematograph film,—

(i) to make a copy of the film, including a photograph of any image forming part thereof;

(ii) to sell or give on hire, or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions;

(iii) to communicate the film to the public;

(e) in the case of a sound recording,—

(i) to make any other sound recording embodying it;

(ii) to sell or give on hire, or offer for sale or hire, any copy of the sound recording regardless of whether such copy has been sold or given on hire on earlier occasions;

(iii) to communicate the sound recording to the public.

Explanation:— For the purposes of this section, a copy which has been sold once shall be deemed to be a copy already in circulation.

8. In section 19 of the principal Act, for sub-section (2), the following sub-sections shall be substituted, namely:—

“(2) The assignment of copyright in any work shall identify such work, and shall specify the rights assigned and the duration and territorial extent of such assignment.

(3) If the rights assigned under sub-section (1) are not specified, it shall be presumed that the assigner has assigned all his rights under this Act:

Provided that if the assignee does not exercise any of such rights within a period of one year from the date of the assignment,

the assignment in respect of such rights shall be deemed to have lapsed after the expiry of the said period.

(4) If the period of assignment is not stated, it shall be deemed to be five years from the date of assignment.

(5) If the territorial extent of assignment of the rights is not specified, it shall be presumed to extend within India.

(6) Nothing in sub-section (2), or sub-section (3) or sub-section (4) or sub-section (5) shall be applicable to assignments made before the coming into force of the Copyright (Second Amendment) Act, 1992.”.

9. For section 19A of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 19A.

“19A. (1) If an assignee fails to make sufficient exercise of the rights assigned to him, and such failure is not attributable to any act or omission of the assignor, then, the Copyright Board may, on receipt of a complaint from the assignor and after holding such inquiry as it may deem necessary, revoke such assignment.

(2) If any dispute arises with respect to the assignment of any copyright, the Copyright Board may, on receipt of a complaint from the aggrieved party and after holding such inquiry as it considers necessary, pass such order as it may deem fit including an order for the recovery of any royalty payable:

Provided that the Copyright Board shall not pass any order under this sub-section to revoke the assignment unless it is satisfied that the terms of assignment are harsh to the assignor in case the assignor is also the author:

Provided further that no order of revocation of assignment under this sub-section, shall be made within a period of five years from the date of such assignment.”.

10. After section 30 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 30 A.

“30A. The provisions of sections 19 and 19A shall, with any necessary adaptations and modifications, apply in relation to a licence under section 30 as they apply in relation to assignment of copyright in a work.”.

Application of sections 19 and 19A.

11. For Chapter VII of the principal Act, the following Chapter shall be substituted, namely:—

Substitution of new Chapter for Chapter VII.

“CHAPTER VII

COPYRIGHT SOCIETIES

33. (1) No person or association of persons shall, after coming into force of the Copyright (Second Amendment) Act, 1992, com-

Copyright

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of fees,
charges
and
royal-
ties.

mence or carry on the business of issuing or granting licences in respect of any work in which copyright subsists, or in respect of any other rights conferred by this Act except under or in accordance with the registration granted under sub-section (3):

Provided that a performing rights society functioning in accordance with the provisions of section 33 on the date immediately before the coming into force of the said Act shall be deemed to be a copyright society for the purposes of this Chapter.

(2) Any association of persons who fulfils such conditions as may be prescribed may apply for permission to do the business specified in sub-section (1) to the Registrar of Copyrights who shall submit the application to the Central Government.

(3) The Central Government may, having regard to the interests of the authors and other owners of rights under this Act, the interest and convenience of the public and in particular of the groups of persons who are most likely to seek licences in respect of the relevant rights and the ability and professional competence of the applicants, register such association of persons as a copyright society subject to such conditions as may be prescribed:

Provided that the Central Government shall not ordinarily register more than one copyright society to do business in respect of the same class of works.

(4) The Central Government may, if it is satisfied that a copyright society is being managed in a manner detrimental to the interests of the owners of rights concerned, cancel the registration of such society after such inquiry as may be prescribed.

(5) If the Central Government is of the opinion that in the interest of the owners of rights concerned, it is necessary so to do, it may, by order, suspend the registration of such society pending inquiry for such period not exceeding one year as may be specified in such order under sub-section (4) and that Government shall appoint an administrator to discharge the functions of the copyright society.

Adminis-
tration of
rights of
owner by
copyright
society.

34. (1) Subject to such conditions as may be prescribed,—

(a) a copyright society may accept from an owner of rights exclusive authorisation to administer any right in any work by issue of licences or collection of licence fees or both; and

(b) an owner of rights shall have the right to withdraw such authorisation without prejudice to the rights of the copyright society under any contract.

(2) It shall be competent for a copyright society to enter into agreement with any foreign society or organisation administering rights corresponding to rights under this Act, to entrust to such foreign society or organisation the administration in any foreign country of rights administered by the said copyright society in India, or for administering in India the rights administered in a foreign country by such foreign society or organisation:

Provided that no such society or organisation shall permit any discrimination in regard to the terms of licence or the distribution of fees collected between rights in Indian and other works.

(3) Subject to such conditions as may be prescribed, a copyright society may—

- (i) issue licences under section 30 in respect of any rights under this Act;
- (ii) collect fees in pursuance of such licences;
- (iii) distribute such fees among owners of rights after making deductions for its own expenses;
- (iv) perform any other functions consistent with the provisions of section 35.

34A. (1) If the Central Government is of the opinion that a copyright society for a class of work is generally administering the rights of the owners of rights in such work throughout India, it shall appoint that society for the purposes of this section.

(2) The copyright society appointed under sub-section (1) shall pay remuneration to the owners of rights from the proceeds to be paid to it under section 5 of the Copyright Cess Act, 1992.

(3) The copyright society shall, subject to such rules as may be made in this behalf, frame a scheme for determining the quantum of remuneration payable to individual copyright owners having regard to the number of copies of the work in circulation:

Provided that such scheme shall restrict payment to the owners of rights whose works have attained a level of circulation which the copyright society considers reasonable.

35. (1) Every copyright society shall be subject to the collective control of the owners of rights under this Act whose rights it administers (not being owners of rights under this Act administered by a foreign society or organisation referred to in sub-section (2) of section 34) and shall, in such manner as may be prescribed,—

- (a) obtain the approval of such owners of rights for its procedures of collection and distribution of fees;
- (b) obtain their approval for the utilisation of any amounts collected as fees for any purpose other than distribution to the owner of rights; and
- (c) provide to such owners regular, full and detailed information concerning all its activities in relation to the administration of their rights.

(2) All fees distributed among the owners of rights shall, as far as may be, be distributed in proportion to the actual use of their works.

36. (1) Every copyright society shall submit to the Registrar of Copyrights such returns as may be prescribed.

(2) Any officer duly authorised by the Central Government in this behalf may call for any report and also call for any records of

Pay-
ment of
remune-
rations
by copy-
right
society.

Control
over the
copyright
society
by the
owner of
rights.

Sub-
mission of
returns
and re-
ports.

any copyright society for the purpose of satisfying himself that the fees collected by the society in respect of rights administered by it are being utilised or distributed in accordance with the provisions of this Act.

Rights
and liabi-
lities of
perform-
ing rights
societies.

36A. Nothing in this Chapter shall affect any rights or liabilities in any work in connection with a performing rights society which had accrued or were incurred on or before the day prior to the commencement of the Copyright (Second Amendment) Act, 1992, or any legal proceedings in respect of any such rights or liabilities pending on that day.”.

Amend-
ment of
Chapter
VIII.

12. In Chapter VIII of the principal Act, for the heading “RIGHTS OF BROADCASTING AUTHORITIES”, the heading “RIGHTS OF BROADCASTING ORGANISATION AND OF PERFORMERS” shall be substituted.

Substi-
tution of
new
section
for
section 37.

Broad-
cast
reproduc-
tion right.

13. For section 37 of the principal Act, the following section shall be substituted, namely:—

“37. (1) Every broadcasting organisation shall have a special right to be known as “broadcast reproduction right” in respect of its broadcasts.

(2) The broadcast reproduction right shall subsist until twenty-five years from the beginning of the calendar year next following the year in which the broadcast is made.

(3) During the continuance of a broadcast reproduction right in relation to any broadcast, any person who, without the licence of the owner of the right does any of the following acts of the broadcast or any substantial part thereof,—

(a) re-broadcasts the broadcast; or

(b) causes the broadcast to be heard or seen by the public on payment of any charges; or

(c) makes any sound recording or visual recording of the broadcast; or

(d) makes any reproduction of such sound recording or visual recording where such initial recording was done without licence or, where it was licensed, for any purpose not envisaged by such licence; or

(e) sells or hires to the public, or offers for such sale or hire, any such sound recording or visual recording referred to in clause (c) or clause (d),

shall, subject to the provisions of section 39, be deemed to have infringed the broadcast reproduction right.”’

14. For section 38 of the principal Act, the following section shall be substituted, namely:—

Substitu-
tion of
new
section
for
section 38.

'38. (1) Where any performer appears or engages in any performance, he shall have a special right to be known as the "performer's right" in relation to such performance. Performer's right.

(2) The performer's right shall subsist until twenty-five years from the beginning of the calendar year next following the year in which the performance is made.

(3) During the continuance of a performer's right in relation to any performance, any person who, without the consent of the performer, does any of the following acts in respect of the performance or any substantial part thereof, namely:—

(a) makes a sound recording or visual recording of the performance; or

(b) reproduces a sound recording or visual recording of the performance, which sound recording or visual recording was,—

(i) made without the performer's consent; or

(ii) made for purposes different from those for which the performer gave his consent; or

(iii) made for purposes different from those referred to in section 39 from a sound recording or visual recording which was made in accordance with section 39; or

(c) broadcasts the performance except where the broadcast is made from a sound recording or visual recording other than one made in accordance with section 39, or is a re-broadcast by the same broadcasting organisation of an earlier broadcast which did not infringe the performer's right; or

(d) communicates the performance to the public otherwise than by broadcast, except where such communication to the public is made from a sound recording or a visual recording or a broadcast,

shall, subject to the provisions of section 39, be deemed to have infringed the performer's right.

(4) Once a performer has consented to the incorporation of his performance in a cinematograph film, the provisions of subsections (1), (2) and (3) shall have no further application to such performance.'

Substitution of new sections for section 39.

Acts not infringing broadcast reproduction right or performer's right.

Other provisions applying to broadcast reproduction right and performer's right.

Amendment of section 51.

Amendment of section 52.

15. For section 39 of the principal Act, the following sections shall be substituted, namely:—

"39. No broadcast reproduction right or performer's right shall be deemed to be infringed by—

- (a) the making of any sound recording or visual recording for the private use of the person making such recording, or society for purposes of bona fide teaching or research; or
- (b) the use, consistent with fair dealing, of excerpts of a performance or of a broadcast in the reporting of current events or for bona fide review, teaching or research; or
- (c) such other acts, with any necessary adaptations and modifications, which do not constitute infringement of copyright under section 52.

39A. Sections 18, 19, 30, 53, 55, 58, 64, 65 and 66 shall, with any necessary adaptations and modifications, apply in relation to the broadcast reproduction right in any broadcast and the performer's right in any performance as they apply in relation to copyright in a work:

Provided that where copyright or performer's right subsists in respect of any work or performance that has been broadcast, no licence to reproduce such broadcast shall take effect without the consent of the owner of rights or performer, as the case may be, or both of them."

16. In section 51 of the principal Act,—

(1) in clause (a), for sub-clause (ii), the following sub-clause shall be substituted, namely:—

"(ii) permits for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of copyright; or";

(2) for the proviso, the following proviso shall be substituted, namely:—

"Provided that nothing in sub-clause (iv) shall apply to the import of one copy of any work for the private and domestic use of the importer."

17. In section 52 of the principal Act, in sub-section (1),—

(1) before the words "The following acts shall not constitute an infringement" the words, figures and letter "Subject to the provisions of section 52B" shall be inserted;

(2) in clause (a),—

(i) after the words "artistic work" the words ", not being a computer programme," shall be inserted;

(ii) for sub-clause (i), the following sub-clause shall be substituted, namely:—

“(i) private use, including research”;

(3) after clause (a), the following clause shall be inserted, namely:—

“(aa) the making of copies of adaptation of a computer programme by the lawful possessor of a copy of such computer programme, from such copy—

(i) in order to utilise the computer programme for the purpose for which it was supplied; or

(ii) to make back-up copies purely as a temporary protection against loss, destruction or damage in order only to utilise the computer programme for the purpose for which it was supplied;”;

(4) in clause (i), the words “or the communication to such an audience of a cinematograph film or sound recording”, shall be inserted at the end;

(5) for clauses (j) and (k), the following clauses shall be substituted, namely:—

“(j) the making of sound recordings in respect of any literary, dramatic or musical work, if—

(i) sound recordings of that work have been made by or with the licence or consent of the owner of the rights in the work;

(ii) the person making the sound recordings has given a notice of his intention to make the sound recordings, has provided copies of all covers or labels with which the sound recordings are to be sold, and has paid in the prescribed manner to the owner of rights in the work royalties in respect of all such sound recordings to be made by him, at the rate fixed by the Copyright Board in this behalf:

Provided that—

(i) no alterations shall be made which have not been made previously by or with the consent of the owner of rights, or which are not reasonably necessary for the adaptation of the work for the purpose of making the sound recordings;

(ii) the sound recordings shall not be issued in any form of packaging or with any label which is likely to mislead or confuse the public as to their identity;

(iii) no such sound recording shall be made until the expiration of two calendar years after the end of the year in which the first sound recording of the work was made; and

(iv) the person making such sound recordings shall allow the owner of rights or his duly authorised agent or representative to inspect all records and books of account relating to such sound recording:

Provided further that if on a complaint brought before the Copyright Board to the effect that the owner of rights has not been paid in full for any sound recordings purporting to be made in pursuance of this clause, the Copyright Board is, *prima facie*, satisfied that the complaint is genuine, it may pass an order *ex parte* directing the person making the sound recording to cease from making further copies and, after holding such inquiry as it considers necessary, make such further order as it may deem fit, including an order for payment of royalty;

(k) the causing of a recording to be heard in public by utilising it,—

(i) in an enclosed room or hall meant for the common use of residents in any residential premises (not being a hotel or similar commercial establishment) as part of the amenities provided exclusively or mainly for residents therein; or

(ii) as part of the activities of a club or similar organisation which is not established or conducted for profit;”;

(6) for clause (s), the following clause shall be substituted, namely:—

“(s) the making or publishing of a painting, drawing, engraving or photograph of a work of architecture or the display of a work of architecture;”;

(7) clause (w) shall be omitted;

(8) after clause (y), the following clauses shall be inserted, namely:—

“(z) the making of an ephemeral recording, by a broadcasting organisation using its own facilities for its own broadcast by a broadcasting organisation of a work which it has the right to broadcast; and the retention of such recording for archival purposes on the ground of its exceptional documentary character;

(za) the performance of a literary, dramatic or musical work or the communication to the public of such work or of a sound recording in the course of any *bona fide* religious ceremony or an official ceremony held by the Central Government or the State Government or any local authority.

Explanation.—For the purpose of this clause, religious ceremony including a marriage procession and other social festivities associated with a marriage.”.

18. After section 52A of the principal Act, the following sections shall be inserted, namely:—

Inser-
tion of
new
sections
52B.
and
52C.

"52B. In case of—

(i) the reproduction of a work by means of a reprographic equipment for any of the purposes specified under section 52; or

(ii) the reproduction of any sound recording or cinematographic film by means of a tape recorder or video-cassette recorder or similar equipment for any of the purposes specified in section 52, except the making of sound recordings under clause (j) of sub-section (1) of that section,

the reproduction of any work shall be subject to the payment of remuneration to the owners of rights in such work under the provisions of section 34A.

Repro-
duction
of work
subject to
section
34A.

52C. (1) Every copyright society appointed under section 34A shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, including the income and expenditure and the quantum of remuneration paid to individual owners of rights out of the payments received from the Central Government under the Copyright Cess Act, 1992 in such form and in such manner as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

Accounts
and
audit.

(2) The accounts of each of the copyright societies in relation to the payments received from the Central Government shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the copyright society to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General of India or any other person appointed by him in connection with the audit of the accounts of the copyright society referred to in sub-section (2) shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts and other documents and papers and to inspect any of the offices of the copyright society for the purpose only of such audit.

(4) The accounts of each of the copyright societies as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.”

In-
ser-
tion
of new
sec-
tion
53A.

Resale
share
right in
original
copies.

19. After section 53 of the principal Act, the following section shall be inserted, namely:—

“53A. (1) In the case of resale for a price exceeding ten thousand rupees, of the original copy of a painting, sculpture or drawing, or of the original manuscript of a literary or dramatic work or musical work, the author of such work if he was the first owner of rights under section 17 or his legal heirs shall, notwithstanding any assignment of copyright in such work, have a right to share in the resale price of such original copy or manuscript in accordance with the provisions of this section:

Provided that such right shall cease to exist on the expiration of the term of copyright in the work.

(2) The share referred to in sub-section (1) shall be such as the Copyright Board may fix and the decision of the Copyright Board in this behalf shall be final:

Provided that the Copyright Board may fix different shares for different classes of work:

Provided further that in no case shall the share exceed ten per cent. of the resale price.

(3) If any dispute arises regarding the right conferred by this section, it shall be referred to the Copyright Board whose decision shall be final.”.

Amend-
ment of
section 57.

20. In section 57 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Independently of the author's copyright and even after the assignment either wholly or partially of the said copyright, the author of a work shall have the right—

(a) to claim authorship of the work; and

(b) to restrain or claim damages in respect of any distortion, mutilation, modification or other act in relation to the said work which is done before the expiration of the term of copyright if such distortion, mutilation, modification or other act would be prejudicial to his honour or reputation:

Provided that the author shall not have any right to restrain or claim damages in respect of any adaptation of a computer programme to which clause (aa) of sub-section (1) of section 52 applies.

Explanation.—Failure to display a work or to display it to the satisfaction of the author shall not be deemed to be an infringement of the rights conferred by this section.”.

21. In section 63 of the principal Act,—

(1) in clause (b), the words, figures and letter “except the right conferred by section 53A” shall be inserted at the end;

Amend-
ment of
section
63.

(2) in the proviso, after the words "Provided that", the words "where the infringement has not been made for gain in the course of trade or business" shall be inserted.

22. In the proviso to section 63A of the principal Act, after the words "Provided that", the words "where the infringement has not been made for gain in the course of trade or business" shall be inserted.

23. After section 63A of the principal Act, the following sections shall be inserted, namely:—

1 of 1944.
52 of 1962.

"63B. (1) Notwithstanding anything contained in the Central Excises and Salt Act, 1944 and the Customs Act, 1962, the non-payment of cess under the Copyright Cess Act, 1992 shall be deemed to be an offence under this Act and the provisions of section 63 shall apply.

(2) No court shall take cognizance of an offence under sub-section (1) except on a complaint made by the copyright society appointed under section 34A.

63C. Any person who knowingly makes use on a computer of an infringing copy of a computer programme shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:

Provided that where the computer programme has not been used for gain or in the course of trade or business, the court may, for adequate and special reasons to be mentioned in the judgment, not impose any sentence of imprisonment and may impose a fine which may extend to fifty thousand rupees".

24. In section 78 of the principal Act, in sub-section (2),—

(i) after clause (c), the following clauses shall be inserted, namely:—

"(ca) the conditions for submission of application under sub-section (2) of section 33;

(cb) the conditions subject to which a copyright society shall be registered under sub-section (3) of section 33;

(cc) the inquiry for cancellation of registration under sub-section (4) of section 33;

(cd) the conditions subject to which the copyright society may accept authorisation under clause (a) of sub-section (1) of section 34 and the conditions subject to which owners of rights have right to withdraw such authorisation under clause (b) of that sub-section;

Amend-
ment of
section
63A.

Inserva-
tion of
new
sections
63B
and 63C.

Punish-
ment
for non-
payment
of cess
levied
under
the Copy-
right
Cess
Act.

Know-
ing use
of in-
fringing
copy of
computer
program-
me to be
an
offence.

Amend-
ment of
section
78.

(ce) the conditions subject to which a copyright society may issue licences, collect fees and distribute such fees amongst owners of rights under sub-section (3) of section 34;

(cf) the manner in which the approval of the owners of rights regarding collection and distribution of fees, approval for utilisation of any amount collected as fees and to provide to such owners information concerning activities in relation to the administration of their rights under sub-section (1) of section 35;

(cg) the returns to be filed by copyright societies to the Registrar of Copyrights under sub-section (1) of section 36;”;

(ii) after clause (d), the following clauses shall be inserted, namely:—

“(da) the manner of payment of royalty under clause (j) of sub-section (1) of section 52;

(db) the form and the manner in which the copyright society shall maintain accounts and other relevant records and prepare annual statements of accounts and the manner in which the quantum of remuneration is to be paid to individual owner of rights under sub-section (1) of section 52C.”.

STATEMENT OF OBJECTS AND REASONS

Effective copyright protection promotes and rewards human creativity and is, in modern society, an indispensable support for intellectual, cultural and economic activity. Copyright law promotes the creation of literary, artistic, dramatic and musical works, cinematograph films and sound recordings by providing certain exclusive rights to their authors and creators. The law relating to copyright and related rights has been under comprehensive review of the Government for some time, taking into account the difficulties expressed by different groups of copyright owners and others, the experience gained from the administration of the existing law and the situation created by various technological developments that have taken place.

2. The Copyright Act, 1957 amended and consolidated the law relating to copyright in India. It was further amended by the Copyright (Amendment) Acts of 1983 and 1984 and certain improvements were effected. By the Copyright (Amendment) Act, 1992 the term of copyright was further extended by a period of ten years. Now, it is considered appropriate to further amend the provisions of the Copyright Act, 1957—

to extend effective copyright protection to the composers of Indian music, which is not available to them under the existing law which presupposes a system of notation as used in Western music;

to extend protection to all performers by means of a special right, to be known as the "performer's right", in respect of the making of sound recordings or visual recordings of their live performances, and of certain related acts;

to protect the interests of authors, assignors or licensors in regard to the assignment of copyright and the issue of licences;

to extend more effective protection to owners of copyright and related rights in the context of technological developments affecting the reproduction of works by, *inter alia*, bringing within the scope of copyright the subsequent hire or sale of copies of cinematograph films, computer programmes and sound recordings;

to further clarify the law in respect of cable, satellite and other means of simultaneous communication of works to more than one household or private place of residence, including the residential rooms of a hotel or hostel;

to make adequate provision for the special nature of computer programmes as literary works and for the protection of computer-generated works;

to extend to authors, in respect of the original copies of their paintings, sculptures and drawings and original manuscripts of literary, dramatic or musical works, a *droit de suite* or resale share right;

to include within the scope of copyright in artistic works the right (subject to appropriate exceptions) to display the work in public;

to promote the collective administration of rights through copyright societies in the interests both of the owners of rights and of the general public;

to make provision for licences whereby the reproduction of works by reprographic equipment or by means of devices such as tape-recorders and video cassette recorders, where such reproduction would not under the existing law be infringement of copyright, shall be subject to the payment of remuneration to copyright owners by means of a levy on such equipment;

to deal more effectively with the infringement of copyright and related rights;

to further improve the functioning of the Copyright Board;

to simplify and improve the law relating to copyright and related rights, in the interests of the general public, and in particular of the users as well as the owners of such rights.

3. The Bill seeks to achieve the above objects.

NEW DELHI;

ARJUN SINGH.

The 6th May, 1992.

Notes on clauses

Clause 2.—This clause seeks to amend section 2 of the Copyright Act, 1957 (hereinafter referred to as the principal Act).

Sub-clause (i) seeks to amend clause (a) of section 2 of the principal Act to better ensure full protection of the author's exclusive right of authorising arrangements and other alterations of his works as envisaged by article 12 of the Berne Convention for the Protection of Literary and Artistic Works (hereinafter referred to as the Berne Convention).

Sub-clause (ii) seeks to amend clause (b). The present term "architectural work of art" is difficult to interpret in some cases and is inconsistent with the general copyright principle that the aesthetic merit of a protected work is of no account. After replacement of this term by "work of architecture", which is also the term used in the Berne Convention, the courts or other authorities will not be required to consider the aesthetic value of the work but only the question whether the work qualifies as an "original work" which is a well-known concept in copyright law.

Sub-clause (iii) seeks to amend sub-clauses (v) and (vi) of clause (d). In sub-clause (v) it is now proposed to define the "author" of a cinematograph film or a sound recording as the producer thereof instead of as the owner of the film or "plate", as the case may be. The revised definition proposed is consistent with common usage and, also, is not tied to any particular technology. A definition of the term "producer" is also proposed to be inserted separately [vide sub-clause (xiii)].

Sub-clause (iv) seeks to amend clause (f), improving the present definition of "cinematograph film".

Sub-clause (v) seeks to amend clause (ff) substituting a more comprehensive definition of "communication to the public" which will remove all uncertainty in relation to satellite, cable or other means of simultaneous communication to different households, etc. Secondly, it will, read with the proposed amendment to section 14 in the principal Act (vide clause 7), extend copyright protection to the public display and exhibition of works in the interests of the authors of artistic works (subject of course to the exceptions contained in section 52 of the principal Act). Thirdly, it will incorporate the substance of the definition of "performance" contained in clause (q), enabling the latter definition to be revised to deal with performances in the context of performers' rights (vide clause 14).

This sub-clause also seeks to insert new definitions of the terms "composer", "computer", "computer programme" and "copyright society".

Sub-clause (vi) proposes to insert a further definition of "author" in regard to computer-generated works.

In the proposed new clause (ff) to be inserted in section 2, the "composer" (who is the author of a musical work) means the person who composes the music regardless of whether he records it in any form of graphical notation. This definition is considered necessary because Indian music is not commonly recorded in any complete form of graphical notation as is the case with Western music, and is to be read with sub-clause (viii).

A definition of "computer" is sought to be inserted together with a new definition of "computer programme" as the existing description of a "computer programme" in clause (o) of the principal Act is unsatisfactory.

A definition of "copyright society" is sought to be inserted which is to be read with sub-clause (xi) proposing deletion of the definition of "performing rights society". This is in order to widen the scope of collective administration consistent with clause 11 of the Bill.

Sub-clause (vi) proposes amendments in the definition of "infringing copy" contained in clause (m) consistent with the verbal changes resulting from other amendments.

Sub-clause (vii) seeks to amend the definition of "literary work" contained in clause (o) consistent with the revised definition of computer programme *vide* sub-clause (v) described above, and to clarify the position regarding computer data basis.

Sub-clause (viii) seeks to amend the definition of "musical work" contained in clause (p) in order not to restrict the term to works recorded in any form of graphical notation or even to works reduced to material form in any other manner. The absence of any requirement that a musical work shall have been reduced to material form before it can enjoy copyright protection is specifically permissible under article 2(2) of the Berne Convention though it will mark a conscious departure from British legal tradition in this regard. This amendment is proposed in order to extend copyright protection effectively to Indian musical works and may be read with the proposed definition of "composer" *vide* sub-clause (v).

Sub-clause (ix) seeks to amend the definition of "performance" consistent with the proposed introduction of a performer's right by clause 14 below. The expanded definition of "communication to the public" *vide* clause (v) described above will take care of the work done by the definition of the term "performance" at present existing in the principal Act.

Sub-clause (x) seeks to insert a definition of "performer" in view of the proposed protection of performers' rights. A wide definition of the term, not limited to performers of works, is proposed.

Sub-clause (xi) seeks to delete clause (r) in section 2 of the principal Act, and should be read with the proposed definition of "copyright society".

Sub-clause (xii) proposes substitution of the word "record" by "sound recording" throughout the Act. [For reasons, see note on sub-clause (xiv)].

Sub-clause (xiii) seeks to insert a definition of the term "producer", which is to be read with the proposed amendment of sub-clauses (v) and (vi) of section 2.

Sub-clause (xiv) proposes deletion of clause (w) which defines "record" and "recording" and is to be read with the proposed introduction of the term "sound recording" *vide* sub-clause (xv) described below.

Sub-clause (xv) seeks to insert definitions of "reprography" and "sound recording". The proposed definition of "reprography" is necessitated particularly by clause 18 discussed below. The term "sound recording" is proposed instead of the term "record" occurring at present as the latter term has become outdated through association with an obsolescent technology of sound reproduction. The proposed definition of "sound recording" will not be tied to any particular technology.

Clause 3.—This clause seeks to amend section 3 which defines the term "publication" and should be read with the revised definition of "communication to the public" proposed in sub-clause (v) of clause 2. The present definition of "publication" serves a dual purpose, both as providing a principle for determining the term of copyright under sections 5 and 6, and as one of the rights comprising copyright under section 14 of the principal Act. The revised definitions are intended to simplify matters in this regard.

Clause 4.—This clause seeks to amend section 6 to better define the role of the Copyright Board, *viz.*, to determine the date of first publication of a work where it arises in connection with any question about the term of copyright in a work. Secondly, the proviso seeks to simplify the task of the Copyright Board, not requiring it to ascertain the reasonable requirements of the public but simply to consider whether the issue of copies or communication to the public was too insignificant to mark commencement, of the term of copyright.

Clause 5.—This clause seeks to amend section 11 by raising the maximum membership of the Copyright Board from eight to fourteen (which would facilitate creation of benches on a regional basis) and by deleting the redundant words "a Judge of the Supreme Court" in the possible qualifications of a Chairman of the Copyright Board.

Clause 6.—This clause seeks to amend section 12 to improve the functioning of the Copyright Board.

Clause 7.—This clause seeks to amend section 14 consistent with the other amendments proposed, including the revised definitions of "publication", "performance" and "communication to the public", and in order to improve and clarify the rights comprising copyright in different classes of work.

In respect of literary, dramatic and musical works, the right to reproduce the work in any material form is sought to be clarified by specifically including the storing of the work in any medium by electronic means.

In the case of computer programmes, cinematograph films and sound recordings, the scope of copyright is proposed to be amplified to include the right to sell or give on hire or offer for sale or hire any copies of such works. The intention here is to facilitate the flow of remuneration to copyright owners which (notably in the case of cinematograph film) may be assisted by appropriate collective administration through copyright societies; these rights will also provide an added safeguard against distribution of infringing copies.

In the case of an artistic work, the right to reproduce the work is proposed to be amplified to specifically include reproduction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work. This should be read with the proposed deletion of clause (w) of sub-section (1) of section 52 in the principal Act, *vide* clause 17. In its application to artistic works the revised definition of "communication to the public" will also confer on the copyright owner a right of public display of the work (subject of course to the exceptions provided in section 52).

In regard to cinematograph films, the right to make a copy of the film is proposed to be amplified to specifically include a photograph of any image forming part of the film (subject of course to exceptions provided for in section 52).

Clause 8.—This clause seeks to amend section 19 which relates to assignment of copyright and will also apply, by virtue of the proposed insertion of a new section 30A (*vide* clause 10), to licences under section 30. The proposed sub-section (2) seeks to clarify what is required in any assignment of copyright, in the interests of both assignor and assignee. The proposed sub-sections (3), (4) and (5) seek to provide for contingencies in which the agreement effecting assignment of copyright is not clear, and to protect the interests of the assignor in such cases.

Clause 9.—This clause seeks to substitute the existing provisions of section 19A by clearer and more detailed provisions protecting authors and assignors from failure by the assignee to exercise the rights assigned to him, and also to provide authors and assignors with remedies through the Copyright Board for insufficient exercise of rights, for non-payment of royalties or in connection with other disputes which may arise, while at the same time, protecting the legitimate interests of publishers or other assignees.

Clause 10.—This clause seeks to extend the protection enjoyed by assignors in respect of assignment of copyright to licensors in respect of licences under section 30 of the Act by inserting a new clause 30A.

Clause 11.—This clause seeks to substitute new provisions for Chapter VII to make provision for copyright societies in respect of any kind of right (and not merely "performer's rights") and to make adequate general provision for the registration and management of such societies in the interests both of authors and of other copyright owners for whom it would be impracticable or uneconomical to licence the use of their work individually to all users, or to collect fees from them, and also in the

interests of the general public and particularly of users of rights who may not conveniently be able to obtain licences from individual authors or copyright holders; and thus to improve the enforcement of copyright with benefits both to the holders of rights and to the general public.

Clause 12.—This clause seeks to substitute a new heading in respect of Chapter VIII to reflect the protection now proposed to be accorded to performers as well as broadcasting organisations. The term "Broadcasting organisation" is proposed to be substituted for the term "Broadcasting authorities" as expressing the intention of the statute more clearly.

Clause 13.—This clause seeks to substitute a new provision for the existing provisions of section 37 in the interest of clarity and completeness. The word "broadcast" is used rather than the undefined term "programme". Secondly, it is proposed that merely making a broadcast heard in public (as under the existing provision) should not be infringement of the broadcast reproduction right to avoid possible harassment of the general public; instead, causing the broadcast or any substantial part thereof to be heard or seen by the public on payment of any charges will be infringement. Thirdly, it is sought to amplify and clarify the broadcast reproduction right by specifying that the recording of a broadcast, or making copies of such recordings of a broadcast, or selling or hiring such recordings or offering them for sale or hire, will constitute infringement. This will, however, be subject to appropriate exceptions as proposed in clause 15.

Clause 14.—This clause seeks to insert new provisions creating a special right to be known as the performer's right which will conform to the requirements of the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (hereinafter referred to as the Rome Convention). This includes the right to make a sound recording or visual recording of a performance and some consequential right in respect of copies of sound recording and visual recordings, which are sought to be provided in a manner not conflicting unduly with the copyright in a sound recording or cinematograph film or with the broadcast reproduction right. The proposed provisions of sub-section (4) of section 38 are based upon article 19 of the Rome Convention. The performer's right will benefit performers as defined under clause 2(x) above and will also provide an additional source of protection to those composers of Indian music who improvise their compositions during public performances.

Clause 15.—This clause seeks to insert provisions in section 39 specifying the cases where the broadcast reproduction right or performer's right shall not be deemed to be infringed. These proposed provisions are analogous to those contained in section 52 of the principal Act in respect of copyright.

Clause 16.—This clause seeks to amend section 51. The proposed substitution of a new provision for sub-clause (ii) of clause (a) of section 51 makes verbal changes necessitated by the proposed amendment of the terms "performance" and "communication to the public" (*vide* clause 2). The proviso to section 51 is proposed to be substituted by one permitting imports for private and domestic use of one copy of

any work (rather than two copies of most works but none of either a cinematograph film or a "record" as in the existing provision). This is proposed because, on the one hand, import of a single copy should be sufficient for private and domestic use and, on the other, total exclusion of films and sound recordings from the scope of this proviso may result in harassment of a private citizen who may *bona fide* purchase abroad a copy of a cinematograph film (e.g. video tape) or a sound recording, which is not an infringing copy in the country of purchase though it is in India (e.g. because of a different term of copyright, etc.); such a person need not be prevented from importing his personal copy for his private use in India.

Clause 17.—This clause seeks to amend section 52 of the principal Act. Sub-clause (1) seeks to make the provisions of section 52 subject to the provisions of a new section 52B which is proposed to be inserted by section 18.

Sub-clause (2) further seeks to amend clause (a) in sub-section (1) of section 52 because an unduly narrow interpretation of the words "private study" (used at present) may result in harassment to the public. It is proposed to exclude computer programmes from the scope of this clause since a general right to reproduce them for private use is not necessary in the interests of *bona fide* users of computer programmes. It is further proposed to insert a new clause (aa) in sub-section (1) of section 52 to cover the legitimate requirement of the lawful owner of a copy of a computer programme to make adaptations for "debugging" and to make back-up copies.

Sub-clause (3) seeks amendment of clause (i) of sub-section (1) of section 52 which is necessitated by the proposed revised definitions of the terms "performance" and "communication to the public".

Sub-clause (4) seeks to revise the provisions of clause (j) and (k) of sub-section (1) of section 52. The revision of clause (j) seeks to introduce safeguards to prevent misuse of this provision. The proposed revision of clause (k) seeks to limit the free playing of sound recordings in residential premises for use in common rooms of residential premises other than hotels or similar commercial establishments, as part of the amenities provided exclusively for residents, or as part of the activities of a club or similar organisation which is not established or conducted for profit.

Sub-clause (5) seeks to substitute clauses (j) and (k) of sub-section (1) of section 52 to appropriately qualify the right of display created by the new definition of the term "communication to the public" proposed *vide* clause 2(v) described above, supplementing in this regard the existing provisions of clauses (t) and (u).

Sub-clause (6) seeks to substitute clause (s).

Sub-clause (7) seeks to delete clause (w) of sub-section (1) of section 52 as being unnecessary, inappropriate and also difficult to interpret in particular cases.

Sub-clause (8) seeks to insert two new clauses (z) and (za) in sub-section (1) of section 52 dealing respectively with ephemeral recordings made by a broadcasting organisation and with *bona fide* religious and official ceremonies, which it is inappropriate to make subject to copyright.

Clause 18.—This clause seeks to insert new sections 52B and 52C, which may be read with the proposed insertion of a section 34A vide clause 11. The intention is to create what in common copyright parlance is known as a "non-voluntary licence" in respect of reprography and "home taping", whereby members of the public remain free to perform the acts contemplated in section 52 of the principal Act without obtaining the permission of the owners of copyright, but the latter is entitled to remuneration in the form of an amount to be collected on the manufacture or import of the equipment used for such acts, which is distributed through a copyright society to the entitled copyright owners. Copyright societies will determine the quantum of remuneration to individual copyright owners by fixing criteria having regard to the number of copies of the work in circulation, and shall restrict remuneration to those copyright owners whose works have attained reasonable circulation. This method has been resorted to in several countries because of the ease with which members of the public can now reproduce works by the means in question. The provisions will become operative only when the Central Government is of the opinion that a copyright society for a class of work is generally administering the rights in respect of them throughout India. The Copyright Cess Bill, 1972, seeks to provide for the remuneration described above by means of a cess.

Clause 19.—This clause seeks to insert a new section 53A giving the authors of original copies of paintings, sculptures or drawings or of the original manuscripts of literary, dramatic or musical works the right to a share in the subsequent sales of such original copies or original manuscripts, which is the right commonly known as "*droit de suite*" and which is contemplated optionally for member States by article 14 *ter* of the Berne Convention. Besides promoting the interests of authors within India, this proposed provision would also have the effect of obliging those other member States of the Berne Convention which provide for *droit de suite* in their own laws to accord similar rights to Indian authors in respect of sales effected in their countries.

Clause 20.—This clause seeks to amend sub-section (1) of section 57 (concerning author's special rights) in order to limit the remedies available to the author in respect of distortion, mutilation, modification or other acts in respect of his work to cases where such acts would be prejudicial to his honour or reputation. The present provision in the principal Act, whereby even distortion, mutilation and modification of the work which are not prejudicial to the author's honour or reputation would violate the author's special rights, are likely to have anomalous, unintended consequences and are, incidentally, in excess of the requirements of the Berne Convention. It is, therefore, proposed to limit the author's special rights in this regard to the actual requirements of the Berne Convention. Secondly, it is proposed to specify that the author's special rights shall subsist during the term of copyright. Thirdly, it

is proposed to add a proviso in respect of computer programmes consistent with the proposal in sub-clause (2) of clause 17 described above, whereby adaptation of a computer programme for the purpose commonly known as "debugging" is sought to be made permissible. Finally, it is proposed to add an explanation to remove any possible doubt as to the right of the current owner of an original copy of an artistic or other work to display or keep such copy at his discretion.

Clause 21.—This clause seeks to amend section 63 of the principal Act.

Sub-clause (1) seeks to exclude from criminal liability any infringement of the *droit de suite* proposed to be inserted in the principal Act by clause 18 described above. It is intended to limit the remedies available in respect of this new right to civil remedies in view of the *bona fide* difficulties which may exist in locating the author at the time of the sale.

Sub-clause (2) seeks to amend the proviso to section 63 in order to suitably guide and limit the discretion of the court to impose penalties below the normal minimum.

Clause 22.—This clause seeks to make a similar amendment in the proviso to section 63A to which clause 21 seeks to make in respect of section 63.

Clause 23.—This clause seeks to insert two new sections 63B and 63C. The new section 63B will make failure to pay copyright cess an offence. The proposed new section 63C will make knowing use of an infringing copy of a computer programme an offence. Under the proviso, the court will have discretion to impose a sentence lower than the normal minimum in cases where the computer programme was not used for gain or in the course of trade or business. The insertion of such a section in respect of computer programmes is considered necessary in view of the practical difficulty of proving commission of the specific acts enumerated in section 51 in respect of infringing copies of computer programmes, whereas use of an infringing copy of a computer programme may be proved by evidence of its application, and conscious use of such infringing copies should be curbed.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 24 of the Bill seeks to insert new clause in sub-section (2) of section 78 of the Copyright Act, 1957 so as to enable the Central Government to make rules in respect of certain matters provided in the Bill. These matters relate to—

(i) the conditions for submission of application under section 33;

(ii) the conditions subject to which a copyright society shall be registered under section 33;

(iii) the inquiry for cancellation of registration under section 33;

(iv) the conditions subject to which the copyright society may accept authorisation under section 34 and the conditions subject to which the owners of rights have right to withdraw such authorisation under that section;

(v) the conditions subject to which a copyright society may issue licences, collect fees and distribute such fees amongst owners of rights under section 34;

(vi) the manner in which approval of owners of rights regarding collection and distribution of fees, approval for utilisation of any amount collected as fees and to provide to such owners information concerning activities in relation to the administration of their rights under section 35;

(vii) the returns to be filed by copyright societies to the Registrar of Copyrights under section 36;

(viii) the manner of payment of royalty under section 53;

(ix) the form and the manner in which the copyright society shall maintain accounts and other relevant records and prepare annual statements of accounts and the manner in which the quantum of remuneration is to be paid to individual owner of rights under section 52C.

2. As the matters with respect to which rules under the aforesaid clauses are sought to be made are matters of procedure or detail or matters with respect to which it is not practicable to make express provision in the legislation itself, the delegation of legislative power is of normal character.

C. K. JAIN,
Secretary-General.



भारत का राजपत्र

The Gazette of India

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भाग II—खण्ड 1
PART II—Section 1

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इस भाग में चिन्ह पृष्ठ संख्या दी जाती है जिससे कि यह घलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 9th June, 1994/Jyaistha 19, 1916 (Saka)

The following Act of Parliament received the assent of the President on the 9th June, 1994, and is hereby published for general information:—

THE COPYRIGHT (AMENDMENT) ACT, 1994

No. 38 OF 1994

[9th June, 1994]

An Act further to amend the Copyright Act, 1957

BE it enacted by Parliament in the Forty-fifth Year of the Republic of India as follows:—

1. (i) This Act may be called the Copyright (Amendment) Act, 1994.

(ii) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

14 of 1957.

2. In section 2 of the Copyright Act, 1957 (hereinafter referred to as the Principal Act),—

(i) in clause (a),—

(a) in sub-clause (iii), the word “and”, occurring at the end, shall be omitted;

(b) in sub-clause (iv), the word “and” shall be inserted at the end;

Short title and commencement.

Amend-
ment of
section 2.

(c) after sub-clause (iv) as so amended, the following sub-clause shall be inserted, namely:—

“(v) in relation to any work, any use of such work involving its re-arrangement or alteration;”;

(ii) in clause (b) and in all other provisions of the principal Act, for the words “architectural work of art”, wherever they occur, the words “work of architecture” shall be substituted;

(iii) in clause (d), for sub-clauses (v) and (vi), the following sub-clauses shall be substituted, namely:—

“(v) in relation to a cinematograph film or sound recording, the producer; and

(vi) in relation to any literary, dramatic, musical or artistic work which is computer-generated, the person who causes the work to be created;”

(iv) for clause (f), the following clause shall be substituted, namely:—

“(f) “cinematograph film” means any work of visual recording on any medium produced through a process from which a moving image may be produced by any means and includes a sound recording accompanying such visual recording and “cinematograph” shall be construed as including any work produced by any process analogous to cinematography including video films;”;

(v) for clause (ff), the following clauses shall be substituted, namely:—

“(ff) “communication to the public” means making any work available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by issuing copies of such work regardless of whether any member of the public actually sees, hears or otherwise enjoys the work so made available.

Explanation.—For the purposes of this clause, communication through satellite or cable or any other means of simultaneous communication to more than one household or place of residence including residential rooms of any hotel or hostel shall be deemed to be communication to the public;

(ffa) “composer”, in relation to a musical work, means the person who composes the music regardless of whether he records it in any form of graphical notation;

(ffb) “computer” includes any electronic or similar device having information processing capabilities;

(ffc) “computer programme” means a set of instructions expressed in words, codes, schemes or in any other form, including a machine readable medium, capable of causing a computer to perform a particular task or achieve a particular result;

(ffd) “copyright society” means a society registered under sub-section (3) of section 33; ;

(vi) for clause (m), the following clause shall be substituted, namely:—

“(m) “infringing copy” means,—

- (i) in relation to a literary, dramatic, musical or artistic work, a reproduction thereof otherwise than in the form of a cinematographic film;
- (ii) in relation to a cinematographic film, a copy of the film made on any medium by any means;
- (iii) in relation to a sound recording, any other recording embodying the same sound recording, made by any means;
- (iv) in relation to a programme or performance in which such a broadcast reproduction right or a performer's right subsists under the provisions of this Act, the sound recording or a cinematographic film of such programme or performance,

if such reproduction, copy or sound recording is made or imported in contravention of the provisions of this Act;'

(vii) for clause (o), the following clause shall be substituted, namely:—

'(o) "literary work" includes computer programmes, tables and compilations including computer data bases;'

(viii) for clause (p), the following clause shall be substituted, namely:—

'(p) "musical work" means a work consisting of music and includes any graphical notation of such work but does not include any words or any action intended to be sung, spoken or performed with the music;'

(ix) for clause (q), the following clause shall be substituted, namely:—

"(q) "performance", in relation to performer's right, means any visual or acoustic presentation made live by one or more performers;'

(x) after clause (q), the following clause shall be inserted, namely:—

"(qq) "performer" includes an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture or any other person who makes a performance;'

(xi) clause (r) shall be omitted;

(xii) in clause (t) and in all other provisions of the principal Act, for the word "record", wherever it occurs, the words "sound recording" shall be substituted;

(xiii) after clause (u), the following clause shall be inserted, namely:—

"(uu) "producer", in relation to a cinematograph film or sound recording, means a person who takes the initiative and responsibility for making the work;'

(xiv) clause (w) shall be omitted;

(xv) for clause (x), the following clauses shall be substituted, namely:—

"(x) "reprography" means the making of copies of a work, by photocopying or similar means;

(xx) “sound recording” means a recording of sounds from which such sounds may be produced regardless of the medium on which such recording is made or the method by which the sounds are produced.”.

Substitution of new section for section 3.

3. For section 3 of the principal Act, the following section shall be substituted, namely:—

Meaning of publication.

‘3. For the purposes of this Act, “publication” means making a work available to the public by issue of copies or by communicating the work to the public.’.

Substitution of new section for section 6.

4. For section 6 of the principal Act, the following section shall be substituted, namely:—

Certain disputes to be decided by Copyright Board.

‘6. If any question arises,—

(a) whether a work has been published or as to the date on which a work was published for the purposes of Chapter V, or

(b) whether the term of copyright for any work is shorter in any other country than that provided in respect of that work under this Act,

it shall be referred to the Copyright Board constituted under section 11 whose decision thereon shall be final:

Provided that if in the opinion of the Copyright Board, the issue of copies or communication to the public referred to in section 3 was of an insignificant nature it shall not be deemed to be publication for the purposes of that section.’.

Amendment of sections.
11.

5. In section 11 of the principal Act,—

(a) in sub-section (1), for the word “eight”, the word “fourteen” shall be substituted;

(b) in sub-section (3), the words “the Supreme Court or” shall be omitted.

Amendment of section
12.

6. In section 12 of the principal Act,—

(a) after sub-section (2), the following proviso shall be inserted, namely:—

“Provided that, if the Chairman is of opinion that any matter of importance is required to be heard by a larger bench, he may refer the matter to a special bench consisting of five members.”;

(b) in sub-section (3), for the proviso, the following proviso shall be substituted, namely:—

“Provided that where there is no such majority, the opinion of the Chairman shall prevail.”;

(c) in sub-section (4), for the words “The Copyright Board”, the words “The Chairman” shall be substituted.

7. For section 14 of the principal Act, the following section shall be substituted, namely:—

Substi-
tution of
new sec-
tion for
section
14.

'14. For the purposes of this Act, "copyright" means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:—

Meaning
of copy-
right.

(a) in the case of a literary, dramatic or musical work, not being a computer programme,—

(i) to reproduce the work in any material form including the storing of it in any medium by electronic means;

(ii) to issue copies of the work to the public not being copies already in circulation;

(iii) to perform the work in public, or communicate it to the public;

(iv) to make any cinematograph film or sound recording in respect of the work;

(v) to make any translation of the work;

(vi) to make any adaptation of the work;

(vii) to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi);

(b) in the case of a computer programme,—

(i) to do any of the acts specified in clause (a);

(ii) to sell or give on hire, or offer for sale or hire any copy of the computer programme, regardless of whether such copy has been sold or given on hire on earlier occasions;

(c) in the case of an artistic work,—

(i) to reproduce the work in any material form including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work;

(ii) to communicate the work to the public;

(iii) to issue copies of the work to the public not being copies already in circulation;

(iv) to include the work in any cinematograph film;

(v) to make any adaptation of the work;

(vi) to do in relation to an adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (iv);

(d) in the case of a cinematograph film,—

(i) to make a copy of the film, including a photograph of any image forming part thereof;

(ii) to sell or give on hire, or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions;

(iii) to communicate the film to the public;

(e) in the case of a sound recording,—

(i) to make any other sound recording embodying it;

(ii) to sell or give on hire, or offer for sale or hire, any copy of the sound recording regardless of whether such copy has been sold or given on hire on earlier occasions;

(iii) to communicate the sound recording to the public.

Explanation.—For the purposes of this section, a copy which has been sold once shall be deemed to be a copy already in circulation.'

Amend-
ment of
section
19.

8. In section 19 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely :—

"(2) The assignment of copyright in any work shall identify such work, and shall specify the rights assigned and the duration and territorial extent of such assignment.

(3) The assignment of copyright in any work shall also specify the amount of royalty payable, if any, to the author or his legal heirs during the currency of the assignment and the assignment shall be subject to revision, extension or termination on terms mutually agreed upon by the parties.

(4) Where the assignee does not exercise the rights assigned to him under any of the other sub-sections of this section within a period of one year from the date of assignment, the assignment in respect of such rights shall be deemed to have lapsed after the expiry of the said period unless otherwise specified in the assignment.

(5) If the period of assignment is not stated, it shall be deemed to be five years from the date of assignment.

(6) If the territorial extent of assignment of the rights is not specified, it shall be presumed to extend within India.

(7) Nothing in sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) or sub-section (6) shall be applicable to assignments made before the coming into force of the Copyright (Amendment) Act, 1994."

Substi-
tution of
new
section
for
section
19A.

9. For section 19A of the principal Act, the following section shall be substituted, namely :—

Disputes
with
respect to
assign-
ment
of copy-
right.

"19A. (1) If an assignee fails to make sufficient exercise of the rights assigned to him, and such failure is not attributable to any act or omission of the assignor, then, the Copyright Board may, on receipt of a complaint from the assignor and after holding such inquiry as it may deem necessary, revoke such assignment.

(2) If any dispute arises with respect to the assignment of any copyright the Copyright Board may, on receipt of a complaint from the aggrieved party and after holding such inquiry as it considers necessary, pass such order as it may deem fit including an order for the recovery of any royalty payable:

Provided that the Copyright Board shall not pass any order under this sub-section to revoke the assignment unless it is satisfied that the terms of assignment are harsh to the assignor in case the assignor is also the author:

Provided further that no order of revocation of assignment under this sub-section, shall be made within a period of five years from the date of such assignment."

10. After section 30 of the principal Act, the following section shall be inserted, namely:—

Insertion
of new
section
30A.

“30A. The provisions of sections 19 and 19A shall, with any necessary adaptations and modifications, apply in relation to a licence under section 30 as they apply in relation to assignment of copyright in a work.”.

Applica-
tion of
sections
19 and
19A.

11. For Chapter VII of the principal Act, the following Chapter shall be substituted, namely:—

Substi-
tution of
new
Chapter
for Chap-
ter VII.

“CHAPTER VII

COPYRIGHT SOCIETIES

33. (1) No person or association of persons shall, after coming into force of the Copyright (Amendment) Act, 1994 commence or, carry on the business of issuing or granting licences in respect of any work in which copyright subsists or in respect of any other rights conferred by this Act except under or in accordance with the registration granted under sub-section (3):

Provided that an owner of copyright shall, in his individual capacity, continue to have the right to grant licences in respect of his own works consistent with his obligations as a member of the registered copyright society:

Provided further that a performing rights society functioning in accordance with the provisions of section 33 on the date immediately before the coming into force of the Copyright (Amendment) Act, 1994 shall be deemed to be a copyright society for the purposes of this Chapter and every such society shall get itself registered within a period of one year from the date of commencement of the Copyright (Amendment) Act, 1994.

(2) Any association of persons who fulfils such conditions as may be prescribed may apply for permission to do the business specified in sub-section (1) to the Registrar of Copyrights who shall submit the application to the Central Government.

(3) The Central Government may, having regard to the interests of the authors and other owners of rights under this Act, the interest and convenience of the public and in particular of the groups of persons who are most likely to seek licences in respect of the relevant rights and the ability and professional competence of the applicants, register such association of persons as a copyright society subject to such conditions as may be prescribed:

Provided that the Central Government shall not ordinarily register more than one copyright society to do business in respect of the same class of works.

(4) The Central Government may, if it is satisfied that a copyright society is being managed in a manner detrimental to the interests of the owners of rights concerned, cancel the registration of such society after such inquiry as may be prescribed.

(5) If the Central Government is of the opinion that in the interest of the owners of rights concerned, it is necessary so to do, it may, by order, suspend the registration of such society pending inquiry for such period not exceeding one year as may be specified in such order under sub-section (4) and that Government shall appoint an administrator to discharge the functions of the copyright society.

Administration of rights of owner by copy-right society.

34. (1) Subject to such conditions as may be prescribed,—
- (a) a copyright society may accept from an owner of rights exclusive authorisation to administer any right in any work by issue of licences or collection of licence fees or both; and
 - (b) an owner of rights shall have the right to withdraw such authorisation without prejudice to the rights of the copyright society under any contract.
 - (c) It shall be competent for a copyright society to enter into agreement with any foreign society or organisation administering rights corresponding to rights under this Act, to entrust to such foreign society or organisation the administration in any foreign country of rights administered by the said copyright society in India, or for administering in India the rights administered in a foreign country by such foreign society or organisation :

Provided that no such society or organisation shall permit any discrimination in regard to the terms of licence or the distribution of fees collected between rights in Indian and other works.

(2) Subject to such conditions as may be prescribed, a copyright society may—

- (i) issue licences under section 30 in respect of any rights under this Act;
- (ii) collect fees in pursuance of such licences;
- (iii) distribute such fees among owners of rights after making deductions for its own expenses;
- (iv) perform any other functions consistent with the provisions of section 35.

Payment of remunerations by copy-right society.

34A. (1) If the Central Government is of the opinion that a copyright society for a class of work is generally administering the rights of the owners of rights in such work throughout India, it shall appoint that society for the purposes of this section.

(2) The copyright society shall, subject to such rules as may be made in this behalf, frame a scheme for determining the quantum of remuneration payable to individual copyright owners having regard to the number of copies of the work in circulation:

Provided that such scheme shall restrict payment to the owners of rights whose works have attained a level of circulation which the copyright society considers reasonable.

Control over the copy-right society by the owner of rights.

35. (1) Every copyright society shall be subject to the collective control of the owners of rights under this Act whose rights it administers (not being owners of rights under this Act administered by a foreign society or organisation referred to in sub-section (2) of section 34) and shall, in such manner as may be prescribed,—

- (a) obtain the approval of such owners of rights for its procedures of collection and distribution of fees;
- (b) obtain their approval for the utilisation of any amounts collected as fees for any purpose other than distribution to the owner of rights; and
- (c) provide to such owners regular, full and detailed information concerning all its activities, in relation to the administration of their rights.

(2) All fees distributed among the owners of rights shall, as far as may be, be distributed in proportion to the actual use of their works.

Submission of returns and reports.

36. (1) Every copyright society shall submit to the Registrar of Copyrights such returns as may be prescribed.

(2) Any officer duly authorised by the Central Government in this behalf may call for any report and also call for any records of

any copyright society for the purpose of satisfying himself that the fees collected by the society in respect of rights administered by it are being utilised or distributed in accordance with the provisions of this Act.

36A. Nothing in this Chapter shall affect any rights or liabilities in any work in connection with a performing rights society which had accrued or were incurred on or before the day prior to the commencement of the Copyright (Amendment) Act, 1994, or any legal proceedings in respect of any such rights or liabilities pending on that day.”.

Rights
and
liabilities
of perfor-
ming
rights
societies.

12. In Chapter VIII of the principal Act, for the heading “RIGHTS OF BROADCASTING AUTHORITIES”, the heading “RIGHTS OF BROADCASTING ORGANISATION AND OF PERFORMERS” shall be substituted.

Amend-
ment of
Chapter
VIII.

13. For section 37 of the principal Act, the following section shall be substituted, namely:—

Substi-
tution of
new
section
for
section
37.

37. (1) Every broadcasting organisation shall have a special right to be known as “broadcast reproduction right” in respect of its broadcasts.

Broad-
cast
repro-
duction
right.

(2) The broadcast reproduction right shall subsist until twenty-five years from the beginning of the calendar year next following the year in which the broadcast is made.

(3) During the continuance of a broadcast reproduction right in relation to any broadcast, any person who without the licence of the owner of the right does any of the following acts of the broadcast or any substantial part thereof,—

- (a) re-broadcasts the broadcast; or
- (b) causes the broadcast to be heard or seen by the public on payment of any charges; or
- (c) makes any sound recording or visual recording of the broadcast; or
- (d) makes any reproduction of such sound recording or visual recording where such initial recording was done without licence or, where it was licensed, for any purpose not envisaged by such licence; or
- (e) sells or hires to the public, or offers for such sale or hire, any such sound recording or visual recording referred to in clause (c) or clause (d)

~~SECTION 38.—(1) Where any person makes a sound recording or visual recording of a performance, he shall, subject to the provisions of section 39, be deemed to have infringed the broadcast reproduction right.~~

Substi-
tution of
new
section
for
section
38.

14. For section 38 of the principal Act, the following section shall be substituted, namely:—

Performer's
right.

'38. (1) Where any performer appears or engages in any performance, he shall have a special right to be known as the "performer's right" in relation to such performance.

(2) The performer's right shall subsist until twenty-five years from the beginning of the calendar year next following the year in which the performance is made.

(3) During the continuance of a performer's right in relation to any performance, any person who, without the consent of the performer, does any of the following acts in respect of the performance or any substantial part thereof, namely:—

(a) makes a sound recording or visual recording of the performance; or

(b) reproduces a sound recording or visual recording of the performance, which sound recording or visual recording was—

(i) made without the performer's consent; or

(ii) made for purposes different from those for which the performer gave his consent; or

(iii) made for purposes different from those referred to in section 39 from a sound recording or visual recording which was made in accordance with section 39; or

(c) broadcasts the performance except where the broadcast is made from a sound recording or visual recording other than one made in accordance with section 39, or is a re-broadcast by the same broadcasting organisation of an earlier broadcast which did not infringe the performer's right; or

(d) communicates the performance to the public otherwise than by broadcast, except where such communication to the public is made from a sound recording or a visual recording or a broadcast,

shall, subject to the provisions of section 39, be deemed to have infringed the performer's right.

(4) Once a performer has consented to the incorporation of his performance in a cinematograph film, the provisions of subsections (1), (2) and (3) shall have no further application to such performance.'

15. For section 39 of the principal Act the following sections shall be substituted, namely:-

"39. No broadcast reproduction right or performer's right shall be deemed to be infringed by—

(a) the making of any sound recording or visual recording for the private use of the person making such recording, or solely for purposes of *bona fide* teaching or research; or

(b) the use, consistent with fair dealing, of excerpts of a performance or of a broadcast in the reporting of current events or for *bona fide* review, teaching or research; or

(c) such other acts, with any necessary adaptations and modifications, which do not constitute infringement of copyright under section 52.

39A. Sections 18, 19, 30, 53, 55, 58; 64; 65 and 66 shall, with any necessary adaptations and modifications, apply in relation to the broadcast reproduction right in any broadcast and the performer's right in any performance as they apply in relation to copyright in a work:

Provided that where copyright or performer's right subsists in respect of any work or performance that has been broadcast, no licence to reproduce such broadcast shall take effect without the consent of the owner of rights or performer, as the case may be, or both of them."

16 In section 51 of the principal Act—

(1) in clause (a), for sub-clause (ii), the following sub-clause shall be substituted namely:—

"(ii) permits for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of copyright, or";

(2) for the proviso, the following proviso shall be substituted namely:

"Provided that nothing in sub-clause (iv) shall apply to the import of one copy of any work for the private and domestic use of the importer"

Substi-
tution of
new
sections
for
section
39.

Acts not
infringing
broad-
cast
repro-
duction
right or
perfor-
mer's
right.

Other
provi-
sions
applying
to broad-
cast
repro-
duction
right
and
per-
former's
right.

Amend-
ment of
section
51.

Amend.
ment of
section
52.

17. In section 52 of the principal Act, in sub-section (1),—

(1) in clause (a),—

(i) after the words “artistic work”, the words “, not being a computer programme,” shall be inserted;

(ii) for sub-clause (i), the following sub-clause shall be substituted, namely:—

“(i) private use, including research;”;

(2) after clause (a), the following clause shall be inserted, namely:—

“(aa) the making of copies or adaptation of a computer programme by the lawful possessor of a copy of such computer programme, from such copy—

(i) in order to utilise the computer programme for the purpose for which it was supplied; or

(ii) to make back-up copies purely as a temporary protection against loss, destruction or damage in order only to utilise the computer programme for the purpose for which it was supplied;”;

(3) in clause (i), the words “or the communication to such an audience of a cinematograph film or sound recording” shall be inserted at the end;

(4) for clause (j) and (k), the following clauses shall be substituted, namely:—

“(j) the making of sound recordings in respect of any literary, dramatic or musical work, if—

(i) sound recordings of that work have been made by or with the licence or consent of the owner of the right in the work;

(ii) the person making the sound recordings has given a notice of his intention to make the sound recordings, has provided copies of all covers or labels with which the sound recordings are to be sold, and has paid in the prescribed manner to the owner of rights in the work royalties in respect of all such sound recordings to be made by him, at the rate fixed by the Copyright Board in this behalf;

Provided that—

(i) no alterations shall be made which have not been made previously by or with the consent of the owner of rights, or which are not reasonably necessary for the adaptation of the work for the purpose of making the sound recordings;

(ii) the sound recordings shall not be issued in any form of packaging or with any label which is likely to mislead or confuse the public as to their identity;

(iii) no such sound recording shall be made until the expiration of two calendar years after the end of the year in which the first sound recording of the work was made; and

(iv) the person making such sound recordings shall allow the owner of rights or his duly authorised agent or representative to inspect all records and books of account relating to such sound recording:

Provided further that if on a complaint brought before the Copyright Board to the effect that the owner of rights has not been paid in full for any sound recordings purporting to be made in pursuance of this clause, the Copyright Board is, *prima facie*, satisfied that the complaint is genuine, it may pass an order *ex parte* directing the person making the sound recording to cease from making further copies and, after holding such inquiry as it considers necessary, make such further order as it may deem fit, including an order for payment of royalty;

(k) the causing of a recording to be heard in public by utilising it,—

(i) in an enclosed room or hall meant for the common use of residents in any residential premises (not being a hotel or similar commercial establishment) as part of the amenities provided exclusively or mainly for residents therein; or

(ii) as part of the activities of a club or similar organisation which is not established or conducted for profit;"

(5) for clause (s), the following clause shall be substituted, namely:—

"(s) the making or publishing of a painting, drawing, engraving or photograph of a work of architecture or the display of a work of architecture;"

(6) clause (w) shall be omitted;

(7) after clause (y), the following clauses shall be inserted, namely:—

"(z) the making of an ephemeral recording, by a broadcasting organisation using its own facilities for its own broadcast by a broadcasting organisation of a work which it has the right to broadcast; and the retention of such recording for archival purposes on the ground of its exceptional documentary character;

(za) the performance of a literary, dramatic or musical work or the communication to the public of such work or of a sound recording in the course of any bona fide religious ceremony or an official ceremony held by the Central Government or the State Government or any local authority

Explanation.—For the purpose of this clause, religious ceremony including a marriage procession and other social festivities associated with a marriage."

Inser-
tion of
new
section
52B.

Accounts
and
audit.

18. After section 52A of the principal Act, the following section shall be inserted, namely:—

“52B. (1) Every copyright society appointed under section 34A shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, in such form and in such manner as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of each of the copyright societies in relation to the payments received from the Central Government shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the copyright society to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General of India or any other person appointed by him in connection with the audit of the accounts of the copyright society referred to in sub-section (2) shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts and other documents and papers and to inspect any of the offices of the copyright society for the purpose only of such audit.

(4) The accounts of each of the copyright societies as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.”.

Inser-
tion of
new
section
53A.

Resale
share
right in
original
copies.

19. In Chapter XI, after section 53 of the principal Act, the following section shall be inserted, namely:—

“53A. (1) In the case of resale for a price exceeding ten thousand rupees, of the original copy of a painting, sculpture or drawing, or of the original manuscript of a literary or dramatic work or musical work, the author of such work if he was the first owner of rights under section 17 or his legal heirs shall, notwithstanding any assignment of copyright in such work, have a right to share in the resale price of such original copy or manuscript in accordance with the provisions of this section.

Provided that such right shall cease to exist on the expiration of the term of copyright in the work

(2) The share referred to in sub-section (1) shall be such as the Copyright Board may fix and the decision of the Copyright Board in this behalf shall be final.

Provided that the Copyright Board may fix different shares for different classes of work.

Provided further that in no case shall the share exceed ten per cent. of the resale price.

(3) If any dispute arises regarding the right conferred by this section, it shall be referred to the Copyright Board whose decision shall be final.

20. In section 57 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

(1) Independently of the author's copyright and even after the assignment either wholly or partially of the said copyright, the author of a work shall have the right—

(a) to claim authorship of the work; and

(b) to restrain or claim damages in respect of any distortion, mutilation, modification or other act in relation to the said work which is done before the expiration of the term of copyright if such distortion, mutilation, modification or other act would be prejudicial to his honour or reputation:

Provided that the author shall not have any right to restrain or claim damages in respect of any adaptation of a computer programme to which clause (aa) of sub-section (1) of section 52 applies.

Explanation.—Failure to display a work or to display it to the satisfaction of the author shall not be deemed to be an infringement of the rights conferred by this section.”.

21. In section 63 of the principal Act, .

(1) in clause (b), the words, figures and letter “except the right conferred by section 53A” shall be inserted at the end;

(2) in the proviso, after the words “Provided that”, the words “where the infringement has not been made for gain in the course of trade or business” shall be inserted.

22. In the first proviso to section 63A of the principal Act, after the words “Provided that”, the words “where the infringement has not been made for gain in the course of trade or business” shall be inserted.

23. After section 63A of the principal Act, the following section shall be inserted, namely:—

“63B. Any person who knowingly makes use on a computer of an infringing copy of a computer programme shall be punishable with imprisonment for a term which shall not be less than seven days but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:

Provided that where the computer programme has not been used for gain or in the course of trade or business, the court may, for adequate and special reasons to be mentioned in the judgment

Amend-
ment of
section
57.

Amend-
ment of
section
63.

Amend-
ment of
section
63A.

Insert-
ion of
new
section
63B.

Know-
ing use
of in-
fringing
copy of
compu-
ter
prog-
ramme
to be
an
offence.

not impose any sentence of imprisonment and may impose a fine which may extend to fifty thousand rupees.”.

**Amend-
ment of
section
78.**

24. In section 78 of the principal Act, in sub-section (2),—

(i) after clause (c), the following clauses shall be inserted, namely:—

“(ca) the conditions for submission of application under sub-section (2) of section 33;

(cb) the conditions subject to which a copyright society may be registered under sub-section (3) of section 33;

(cc) the inquiry for cancellation of registration under sub-section (4) of section 33;

(cd) the conditions subject to which the copyright society may accept authorisation under clause (a) of sub-section (1) of section 34 and the conditions subject to which owners or rights have right to withdraw such authorisation under clause (d) of that sub-section;

(ce) the conditions subject to which a copyright society may issue licences, collect fees and distribute such fees amongst owners of rights under sub-section (3) of section 34;

(cf) the manner in which the approval of the owners of rights regarding collection and distribution of fees, approval for utilisation of any amount collected as fees and to provide to such owners information concerning activities in relation to the administration of their rights under sub-section (1) of section 35;

(cg) the returns to be filed by copyright societies to the Registrar of Copyrights under sub-section (1) of section 36;”;

(ii) after clause (d), the following clauses shall be inserted, namely:—

“(da) the manner of payment of royalty under clause (j) of sub-section (1) of section 52;

(db) the form and the manner in which the copyright society shall maintain accounts and other relevant records and prepare annual statements of accounts and the manner in which the quantum of remuneration is to be paid to individual owner of rights under sub-section (1) of section 52B.”.

K. L. MOHANPURIA,
Secy. to the Govt. of India.



भारत का राजपत्र

The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड 2

PART II — Section 2

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

RAJYA SABHA

The following Bill was introduced in the Rajya Sabha on 14th December, 1999:—

BILL No. XLV OF 1999.

A Bill further to amend the Copyright Act, 1957.

Be it enacted by Parliament in the Fiftieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Copyright (Amendment) Act, 1999.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

14 of 1957.

Amendment of section 2.

2. In the Copyright Act, 1957 (hereinafter referred to as the principal Act), in section 2, in clause (o), for the words "data basis", the word "databases" shall be substituted.

Amendment of section 14.

3. In section 14 of the principal Act, in clause (b), for sub-clause (ii), the following shall be substituted, namely:—

"(ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme;

Provided that such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental.".

Amendment of
section 38.

4. In section 38 of the principal Act, in sub-section (2), for the words "twenty-five years", the words "fifty years" shall be substituted.

Insertion of
new section
40A.

5. After section 40 of the principal Act, the following section shall be inserted, namely:—

Power of Central Government to apply Chapter VIII to broadcasting organisations and performers in certain other countries.

"40A. (1) If the Central Government is satisfied that a foreign country (other than a country with which India has entered into a treaty or which is a party to a convention relating to rights of broadcasting organisations and performers to which India is also a party) has made or has undertaken to make such provisions, if any, as it appears to the Central Government expedient to require, for the protection in that foreign country, of the rights of broadcasting organisations and performers as is available under this Act, it may, by order published in the Official Gazette, direct that the provisions of Chapter VIII shall apply—

(a) to broadcasting organisations whose headquarters is situated in a country to which the order relates or, the broadcast was transmitted from a transmitter situated in a country to which the order relates as if the headquarters of such organisation were situated in India or such broadcast were made from India;

(b) to performances that took place outside India to which the order relates in like manner as if they took place in India;

(c) to performances that are incorporated in a sound recording published in a country to which the order relates as if it were published in India;

(d) to performances not fixed on a sound recording broadcast by a broadcasting organisation the headquarters of which is located in a country to which the order relates or where the broadcast is transmitted from a transmitter which is situated in a country to which the order relates as if the headquarters of such organisation were situated in India or such broadcast were made from India.

(2) Every order made under sub-section (1) may provide that—

(i) the provisions of Chapter VIII shall apply either generally or in relation to such class or classes of broadcasts or performances or such other class or classes of cases as may be specified in the order;

(ii) the term of the rights of broadcasting organisations and performers in India shall not exceed such term as is conferred by the law of the country to which the order relates;

(iii) the enjoyment of the rights conferred by Chapter VIII shall be subject to the accomplishment of such conditions and formalities, if any, as may be specified in that order;

(iv) Chapter VIII or any part thereof shall not apply to broadcast and performances made before the commencement of the order or that Chapter VIII or any part thereof shall not apply to broadcasts and performances broadcast or performed before the commencement of the order;

(v) in case of ownership of rights of broadcasting organisations and performers, the provisions of Chapter VIII shall apply with such exceptions and modifications as the Central Government may, having regard to the law of the foreign country, consider necessary.".

6. After section 42 of the principal Act, the following section shall be inserted, namely:—

"42A. If it appears to the Central Government that a foreign country does not give or has not undertaken to give adequate protection to rights of broadcasting organisations or performers, the Central Government may, by order published in the Official Gazette, direct that such of the provisions of this Act as confer right to broadcasting organisations or performers, as the case may be, shall not apply to broadcasting organisations or performers whereof are based on incorporated in such foreign country or are subjects or citizens of such foreign country and are not incorporated or domiciled in India, and thereupon those provisions shall not apply to such broadcasting organisations or performers.".

Insertion of new section 42A.

Power to restrict rights of foreign broadcasting organisations and performers.

7. In section 52 of the principal Act, in sub-section (1),—

Amendment of section 52.

(a) after clause (aa), the following clauses shall be inserted, namely:—

"(ab) the doing of any act necessary to obtain information essential for operating inter-operability of an independently created computer programme with other programmes by a lawful possessor of a computer programme provided that such information is not otherwise readily available;

(ac) the observation, study or test of functioning of the computer programme in order to determine the ideas and principles which underline any elements of the programme while performing such acts necessary for the functions for which the computer programme was supplied;

(ad) the making of copies or adaptation of the computer programme from a personally legally obtained copy for non-commercial personal use;";

(b) in the proviso to clause (p), for the words "fifty years", the words "sixty years" shall be substituted.

STATEMENT OF OBJECTS AND REASONS

India is a signatory to the Agreement on Trade Related Aspects of Intellectual Property Right (TRIPS). As per Article 14 of the Agreement, the term of protection available to performers shall last at least until the end of a period of fifty years computed from the end of the calendar year in which the performance took place. Section 38 of the Copyright Act, 1957, *inter alia*, provides that the performers' right shall subsist until twenty-five years from the beginning of the calendar year next following the year in which the performance is made. It is proposed to extend the term of protection of performers' rights from twenty-five years to fifty years and to provide for powers to the Government to extend the provisions of the Copyright Act to broadcasts and performances made in other countries, provided those countries extend similar protection to broadcasts and performances made in India. Extension of the period of protection of performers' rights to fifty years as well as extending applicability of provisions of Copyright Act to broadcasts and performances in other countries shall benefit the Indian broadcasting organisations and performers to get reciprocal protection for their rights in other countries which are signatories to TRIPS. It is also proposed to carry out certain minor modifications in the Act.

2. The Bill seeks to achieve the above objects.

MURLI MANOHAR JOSHI.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 5 of the Bill seeks to insert a new section 40A, in the Copyright Act, 1957, relating to power of Central Government to apply Chapter VIII of the Act to broadcasting organisations and performers of certain other countries. The proposed new section 40A seeks to empower the Central Government to issue order, published in the Official Gazette, applying the provisions of Chapter VIII of the aforesaid Act to the broadcasting organisations and performers in a country (other than a country, with which India has entered into a treaty or, which is a party to a convention relating to rights of broadcasting organisations and performers to which India is also a party) in case such country has made or has undertaken to make such provisions as it appears to Central Government expedient to require for the protection in the foreign country of the rights of broadcasting organisations and performers similar to those as is available in India. Clause 6 proposes to insert a new section 42A relating to power to restrict rights of foreign broadcasting organisations and performers in the aforesaid Act. The proposed new section seeks to empower the Central Government to issue order, published in the Official Gazette, restricting the rights of foreign broadcasting organisations and performers if the Central Government is satisfied that the foreign country does not give or has not undertaken to give adequate protection to rights of broadcasting organisations or performers, as is available in India. These new provisions are sought to be inserted in Chapter IX relating to International Copyright of the Act. Section 43 of the Act requires that the Central Government shall lay before both Houses of Parliament every such order made under Chapter IX.

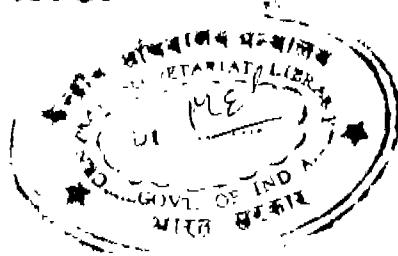
2. It is not practicable to provide for those matters in respect of which orders may be made by the Central Government under proposed new sections 40A and 42A in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

R.C. TRIPATHI,
Secretary-General.

भारत का राजपत्र

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 30th December, 1999, /Pausa 9, 1921 (Saka)

The following Act of Parliament received the assent of the President on the 30th December, 1999, and is hereby published for general information:—

THE COPYRIGHT (AMENDMENT) ACT, 1999

No. 49 OF 1999

[30th December, 1999.]

An Act further to amend the Copyright Act, 1957.

BE it enacted by Parliament in the Fiftieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Copyright (Amendment) Act, 1999.
Short title and commencement
- (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
2. In the Copyright Act, 1957 (hereinafter referred to as the principal Act), in section 2, in clause (o), for the words "data basis", the word "databases" shall be substituted.
Amendment of section 2.

Amendment of section 14.

3. In section 14 of the principal Act, in clause (b), for sub-clause (ii), the following shall be substituted, namely:—

“(ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme;

Provided that such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental.”.

Amendment of section 38.

4. In section 38 of the principal Act, in sub-section (2), for the words “twenty-five years”, the words “fifty years” shall be substituted.

Insertion of new section 40A.

5. After section 40 of the principal Act, the following section shall be inserted, namely:—

“40A. (1) If the Central Government is satisfied that a foreign country (other than a country with which India has entered into a treaty or which is a party to a convention relating to rights of broadcasting organisations and performers to which India is also a party) has made or has undertaken to make such provisions, if any, as it appears to the Central Government expedient to require, for the protection in that foreign country, of the rights of broadcasting organisations and performers as is available under this Act, it may, by order published in the Official Gazette, direct that the provisions of Chapter VIII shall apply—

(a) to broadcasting organisations whose headquarters is situated in a country to which the order relates or, the broadcast was transmitted from a transmitter situated in a country to which the order relates as if the headquarters of such organisation were situated in India or such broadcast were made from India;

(b) to performances that took place outside India to which the order relates in like manner as if they took place in India;

(c) to performances that are incorporated in a sound recording published in a country to which the order relates as if it were published in India;

(d) to performances not fixed on a sound recording broadcast by a broadcasting organisation the headquarters of which is located in a country to which the order relates or where the broadcast is transmitted from a transmitter which is situated in a country to which the order relates as if the headquarters of such organisation were situated in India or such broadcast were made from India.

(2) Every order made under sub-section (1) may provide that—

(i) the provisions of Chapter VIII shall apply either generally or in relation to such class or classes of broadcasts or performances or such other class or classes of cases as may be specified in the order;

(ii) the term of the rights of broadcasting organisations and performers in India shall not exceed such term as is conferred by the law of the country to which the order relates;

(iii) the enjoyment of the rights conferred by Chapter VIII shall be subject to the accomplishment of such conditions and formalities, if any, as may be specified in that order;

(iv) Chapter VIII or any part thereof shall not apply to broadcast and performances made before the commencement of the order or that Chapter VIII or any part thereof shall not apply to broadcasts and performances broadcast or performed before the commencement of the order;

Power of Central Government to apply Chapter VIII to broadcasting organisations and performers in certain other countries.

(v) in case of ownership of rights of broadcasting organisations and performers, the provisions of Chapter VIII shall apply with such exceptions and modifications as the Central Government may, having regard to the law of the foreign country, consider necessary.”.

6. After section 42 of the principal Act, the following section shall be inserted, namely:—

“42A. If it appears to the Central Government that a foreign country does not give or has not undertaken to give adequate protection to rights of broadcasting organisations or performers, the Central Government may, by order published in the Official Gazette, direct that such of the provisions of this Act as confer right to broadcasting organisations or performers, as the case may be, shall not apply to broadcasting organisations or performers whereof are based or incorporated in such foreign country or are subjects or citizens of such foreign country and are not incorporated or domiciled in India, and thereupon those provisions shall not apply to such broadcasting organisations or performers.”.

7. In section 52 of the principal Act, in sub-section (I),—

(a) after clause (aa), the following clauses shall be inserted, namely:—

“(ab) the doing of any act necessary to obtain information essential for operating inter-operability of an independently created computer programme with other programmes by a lawful possessor of a computer programme provided that such information is not otherwise readily available;

(ac) the observation, study or test of functioning of the computer programme in order to determine the ideas and principles which underline any elements of the programme while performing such acts necessary for the functions for which the computer programme was supplied;

(ad) the making of copies or adaptation of the computer programme from a personally legally obtained copy for non-commercial personal use;”;

(b) in the proviso to clause (p), for the words “fifty years”, the words “sixty years” shall be substituted.

Insertion of
new section
42A.

Power to
restrict rights
of foreign
broadcasting
organisations
and perfor-
mers.

Amendment
of
section 52.

RAGHBIR SINGH,
Secy. to the Govt. of India.

